JOURNAL

OF THE

SOCIETY OF COMPARATIVE LEGISLATION.

EDITED FOR THE SOCIETY

BY

JOHN MACDONELL, Esq., C.B., LL.D.

AND

EDWARD MANSON, Esq.

"Δεῖ καὶ τὰς ἄλλας ἐπισκέψασθαι πολιτείας . . . ἵνα τό τ'ὀρθῶς ἔχον ὀφθῃ καὶ τὸ χρήσιμον."—Arist. *Pol.* II. 1.

New Series. 1901. No. 2.

LONDON:

JOHN MURRAY, ALBEMARLE STREET.

1901.

[*All rights reserved.*]

PRINTED BY
HAZELL, WATSON, AND VINEY, LD.
LONDON AND AYLESBURY.

CONTENTS OF No. 2, 1901.

PAGES

1. COUNCIL AND EXECUTIVE COMMITTEE OF THE SOCIETY . . 151–153

2. THE HON. J. CHOATE: BIOGRAPHICAL NOTICE AND PORTRAIT . 155–156
   BY R. NEWTON CRANE, ESQ.

3. NON-CHRISTIAN MARRIAGE 157–203
   BY SIR DENNIS FITZPATRICK, K.C.S.I.

4. THE HISTORY OF THE LAW OF NATURE: A PRELIMINARY STUDY 204–213
   BY SIR FREDERICK POLLOCK, BART.

5. BOOTY OF WAR 214–230
   BY G. G. PHILLIMORE, ESQ.

6. THE MOST FAVOURED NATION ARTICLE 231–237
   BY WALLWYN P. B. SHEPHEARD, ESQ.

7. INTERNATIONAL COMMISSION ON SENTENCES 238–240

8. COMPARATIVE LEGISLATION AS TO HABITUAL DRUNKARDS . 241–251
   BY R. W. LEE, ESQ.

9. THE *PARDA NASHIN* WOMAN AND HER PROTECTION BY BRITISH COURTS OF JUSTICE 252–263
   BY SIR WILLIAM RATTIGAN, M.P.

10. MODES OF LEGISLATION IN THE BRITISH COLONIES: NATAL . 264–270
    BY J. F. W. BIRD, ESQ., *of the Law Department, Natal.*

PAGES

11. TABLE OF MARRIAGE LAWS OF FOUR TYPICAL COMMUNITIES—HINDU, MOMAMMEDAN, PARSI, AND CHRISTIAN—OF BRITISH INDIA 271–274

BY FRAMJEE VICAJEE, ESQ., *of the Bombay Bar.*

12. REVIEW OF THE LEGISLATION OF THE BRITISH EMPIRE IN 1900 275–433

INTRODUCTION TO THE REVIEW OF LEGISLATION (p. 278).

I. UNITED KINGDOM (p. 281).

II. BRITISH INDIA: 1. Acts of Governor-General in Council (p. 312); 2. Madras (p. 315); 3. Bombay (p. 316); 4. Lower Provinces of Bengal (p. 316); 5. North-West Provinces and Oudh (p. 316); 6. Punjab (p. 316); 7. Burma (p. 317); 8. Regulations under 33 Vict., c. 3 (p. 317).

III. EASTERN COLONIES: 1. Ceylon (p. 319); 2. Straits Settlements (p. 321); 3. Federated Malay States: (i) Perak (p. 326); (ii) Selangor (p. 326); (iii) Pahang (p. 326); (iv) Negri Sembilan (p. 326); 4. Hong-Kong (p. 326).

IV. AUSTRALASIA: 1. British New Guinea (p. 329); 2. Fiji (p. 331); 3. New South Wales (p. 332); 4. New Zealand (p. 339); 5. Queensland (p. 350); 6. South Australia (p. 356); 7. Tasmania (p. 363); 8. Western Australia (p. 366); 9. Victoria (p. 369); 10. Western Pacific (p. 374).

V. SOUTH AFRICA: 1. Cape of Good Hope (p. 375); 2. Natal (p. 377); 3. Southern Rhodesia (p. 378).

VI. WEST AFRICA: 1. Gambia (p. 380); 2. Gold Coast (p. 381); 3. Lagos (p. 384); 4. Sierra Leone (p. 385); 5. Southern Nigeria (p. 387).

VII. SOUTH ATLANTIC: 1. Falkland Islands (p. 389).

VIII. NORTH AMERICAN COLONIES: 1. Dominion of Canada (p. 390); 2. British Columbia (p. 392); 3. Manitoba (p. 395); 4. Newfoundland (p. 397); 5. North-West Territories (p. 398); 6. Province of Ontario (p. 399); 7. Prince Edward's Island (p. 402); 8. Province of Quebec (p. 403).

IX. WEST INDIES: 1. The Bahamas (p. 405); 2. Barbados (p. 406); 3. Bermuda (p. 409); 4. British Guiana (p. 411); 5. British Honduras (p. 414); 6. Jamaica (p. 414); 7. Turk's and Caicos Islands (p. 418); 8. Trinidad and Tobago (p. 419); 9. Windward Islands: (i) Grenada (p. 422); (ii) St. Lucia (p. 424); (iii) St. Vincent (p. 425); 10. Leeward Islands: (i) Federal Legislation (p. 426); (ii) Antigua (p. 427); (iii) Dominica (p. 429); (iv) Montserrat (p. 429); (v) St. Christopher and Nevis (p. 430); (vi) Virgin Islands (p. 431).

X. MEDITERRANEAN COLONIES: 1. Cyprus (p. 432); 2. Gibraltar (p. 432); 3. Malta (p. 433).

13. INDEX TO REVIEW OF LEGISLATION 434–453

14. NOTES 454–469

THE SOCIETY OF COMPARATIVE LEGISLATION.

PRESIDENT:

THE RT. HON. THE EARL OF ROSEBERY, K.G., K.T.

CHAIRMAN OF THE EXECUTIVE COMMITTEE:

THE RT. HON LORD DAVEY.

VICE-CHAIRMAN:

SIR COURTENAY ILBERT, K.C.S.I.

COUNCIL:

The Rt. Hon. Lord Alverstone, G.C.M.G., Lord Chief Justice of England.

Sir W. R. Anson, Bart., M.P., Warden of All Souls' College, Oxford.

The Most Noble the Duke of Argyll, K.T., G.C.M.G.

The Rt. Hon. Lord Ashbourne, Lord Chancellor of Ireland.

The Rt. Hon. H. H. Asquith, K.C., M.P.

Thomas Barclay, Esq.

H. C. Beeton, Esq., Agent-General for British Columbia.

The Hon. E. Blake, K.C., M.P.

The Rt. Hon. James Bryce, M.P.

M. Lyon Caen, Membre de l'Institut.

The Rt. Hon. Earl Carrington, G.C.M.G.

The Hon. Sir J. W. Carrington, C.M.G., D.C.L., LL.D., Chief Justice of Hong-Kong.

M. D. Chalmers, Esq., C.S.I., Assistant Parliamentary Counsel to the Treasury.

His Excellency the Hon. J. Choate, United States Ambassador at the Court of St. James's.

Arthur Cohen, Esq., K.C.

F. M. Corbet, Esq.

Baron de Courcel, formerly French Ambassador at the Court of St. James's.

H. Bertram Cox, Esq., Legal Assistant Under Secretary, Colonial Office.

Montague Crackanthorpe, Esq., K.C.

The Rt. Hon. Viscount Cross, G.C.B., G.C.S.I.

M. Dareste, Membre de l'Institut.
The Rt. Hon. Lord Davey.
W. E. Davidson, Esq., C.B., K.C., Legal Adviser to the Foreign Office.
The Rt. Hon. the Earl of Derby K.G., G.C.B.
A. V. Dicey, Esq., K.C., Vinerian Professor of English Law, Oxford.
The Most Hon. the Marquis of Dufferin and Ava, G.C.B., K.P.
Sir R. B. Finlay, K.C., Attorney-General.
C. J. Follett, Esq., C.B., Solicitor to the Commissioners of Customs.
The Rt. Hon. Sir Edward Fry, formerly Lord Justice of Appeal.
Sir James Garrick, K.C.M.G., formerly Agent-General for Queensland.
The Hon. Duncan Gillies, formerly Agent-General for Victoria.
R. B. Haldane, Esq., K.C., M.P.
The Rt. Hon. the Earl of Halsbury, Lord High Chancellor of England.
The Hon. Sir Robert Herbert, G.C.B., formerly Permanent Under Secretary of State for the Colonies.
The Rt. Hon. Lord Hobhouse, K.C.S.I.
Professor T. E. Holland, K.C., Professor of International Law, Oxford.
Sir Courtenay Ilbert, K.C.S.I., Parliamentary Counsel to the Treasury.
A. Taylor Innes, Esq.
The Rt. Hon. Lord James of Hereford.
Professor Jenks, Reader in English Law, University of Oxford.
The Hon. Mr. Justice Kennedy.
Courtney Kenny, Esq., LL.D.
The Rt. Hon. Viscount Knutsford, G.C.M.G.
His Excellency Dr. Koch, President of the Reichsbank, Berlin.
Sir Chandos Leigh, K.C.B., K.C., Counsel to the Speaker.
John M. Lely, Esq.
The Rt. Hon. Lord Lindley, Lord of Appeal.
The Rt. Hon. Lord Lingen, K.C.B.
Prof. Dr. von Liszt, Berlin.
John Macdonell, Esq., C.B., LL.D., Master of the Supreme Court.
Sir K. Muir Mackenzie, K.C.B., K.C., Permanent Secretary to the Lord High Chancellor.
Professor F. W. Maitland, LL.D., D.C.L., Downing Professor of Law, Cambridge.
The Rt. Hon. Lord Justice Mathew.
The Rt. Hon. the Earl of Morley, Chairman of Committees, House of Lords.
Sir Francis Mowatt, G.C.B., Permanent Secretary to the Treasury.
The Rt. Hon. Viscount Peel, late Speaker of the House of Commons.
Sir Westby Perceval, K.C.M.G., Agent-General for Tasmania.
T. D. Pigott, Esq., C.B., Controller of the Stationery Office.
Sir Frederick Pollock, Bart., Corpus Professor of Comparative Jurisprudence, Oxford.
T. Raleigh, Esq., Legal Member of the Council of the Viceroy of India.
The Rt. Hon. Lord Reay, G.C.S.I., formerly Governor of Bombay.
Sir Robert Reid, G.C.M.G., K.C., M.P.
The Rt. Hon. Cecil Rhodes, formerly Prime Minister of Cape Colony.
The Rt. Hon. the Earl of Rosebery, K.G., K.T., *President.*
M. R. Saleilles, Professeur à la Faculté de Droit de Paris.
Ernest Schuster, Esq., LL.D., Munich.

Professor Dr. Sohm, Leipzig.
Whitley Stokes, Esq., C.S.I., formerly Legal Member of the Council of the Viceroy of India.
Sir Charles Tupper, Bart., G.C.M.G., formerly High Commissioner for Canada.
The Rt. Hon. Lord Welby, G.C.B.
Sir Raymond West, K.C.I.E.
Professor Westlake, K.C., Professor of International Law, Cambridge.
E. H. Whittuck, Esq.
Sir Arthur Wilson, K.C.I.E., Legal Adviser to the India Office.
H. F. Wilson, Esq., Secretary to the Orange Free State.
The Hon. Mr. Justice Wright.
Sir Henry Wrixon, K.C.M.G.

EXECUTIVE COMMITTEE:

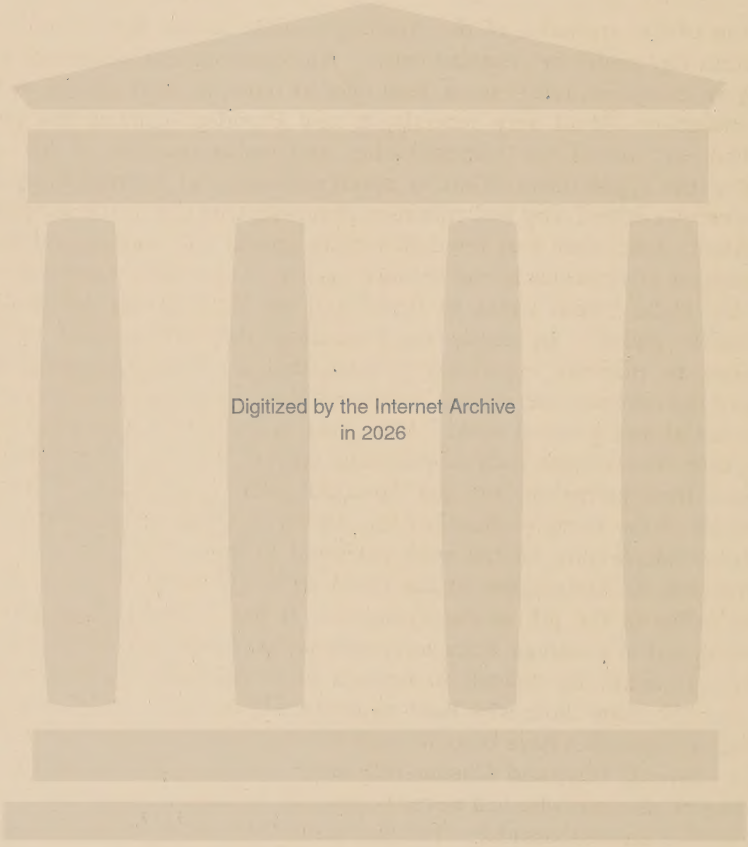
Thomas Barclay, Esq.
The Hon. E. Blake, K.C., M.P.
The Rt. Hon. James Bryce, M.P.
Mackenzie Dalzell Chalmers, Esq., C.S.I.
Arthur Cohen, Esq., K.C.
H. Bertram Cox, Esq.
Montague Crackanthorpe, Esq., K.C.
W. F. Craies, Esq.
Newton Crane, Esq.
The Rt. Hon. Lord Davey, *Chairman.*
W. E. Davidson, Esq., C.B., K.C.
Sir James Garrick, K.C.M.G.
Albert Gray, Esq.
R. B. Haldane, Esq., K.C.
John Hunter, Esq.
Sir Courtenay Ilbert, K.C.S.I., *Vice-Chairman.*
The Rt. Hon. Lord James of Hereford.
John Macdonell, Esq., C.B., LL.D.
Sir Kenneth Muir Mackenzie, K.C.B., K.C.
Professor F. W. Maitland, LL.D., D.C.L.
The Rt. Hon. Lord Reay, G.C.S.I.
J. A. Simon, Esq.
Whitley Stokes, Esq., C.S.I.
Sir Charles Tupper, Bart., G.C.M.G.
The Rt. Hon. Lord Welby, G.C.B.
Sir Raymond West, K.C.I.E.
Professor Westlake, K.C.
H. F. Wilson, Esq.

HONORARY SECRETARY:

EDWARD MANSON, ESQ., 8, Old Square, Lincoln's Inn.

EDITORS OF THE JOURNAL:

JOHN MACDONELL, ESQ., C.B., LL.D.
EDWARD MANSON, ESQ.


Digitized by the Internet Archive
in 2026

https://archive.org/details/journal-of-comparative-legislation-and-international-law_1901_3_2

THE AMERICAN AMBASSADOR.

[*Contributed by* R. Newton Crane, Esq.]

It is one of the anomalies of the American public service that it embraces no stable diplomatic or consular corps. Ambassadors and ministers, with hardly an exception, retire, or at least offer to retire, at each change of the Administration. Until very recently, a new President coming into office has had, as one of the responsibilities and embarrassments of his new position, the appointment of six or seven ambassadors; between thirty and forty envoys-extraordinary and ministers-plenipotentiary; as many secretaries of legation; more than four hundred consuls-general and consuls, and twice that number of vice-consuls and consular agents. These officers are scattered over the globe "from China to Peru," and are charged with delicate and responsible duties. In nearly every instance they are selected without reference to previous experience in such duties. The ambassadors and many of the ministers are chosen because of their prominence and influence in the social and political world. The great majority of the consular corps come from an energetic body of practising lawyers, while the remainder are recruited from journalism and the "peaceful paths of commerce." Nevertheless all of the foreign officials of the American Government have shown a peculiar adaptability for the work entrusted to them.

The post of Ambassador to the Court of St. James is regarded as the highest office in the gift of the President. It has invariably been worthily bestowed, and in a manner alike acceptable to the American and the English people. It would be difficult to name a more illustrious list of members of a republic than those who have represented America in this Court. Of the four whose names have become most familiar during the past few years—Phelps, Bayard, Hay, and Choate—all were lawyers. Mr. Choate is the only one of the four who had never held office, elective or appointive, prior to becoming an Ambassador. He had resolutely refused to be a candidate for or to receive public office, determining to devote himself exclusively to the practice of his profession.

Mr. Choate was born in Salem, Massachusetts, on January 24th, 1832. He graduated at Harvard in 1852, and three years later was admitted to the Bar in Massachusetts. Almost immediately afterwards, however, he removed to New York, where in 1856 he began the distinguished career at the voluntary close of which he was, by common consent, recognised

as the foremost lawyer in the United States. Almost from the first he attained prominence, and for thirty years past there has hardly been a case of importance in the State or Federal Courts in New York or Washington in which he has not appeared. He inherited the remarkable gift of his uncle, Rufus Choate, who was unquestionably the greatest advocate and winner of verdicts who ever appeared before a jury in America. In addition he has unusual power of close reasoning, and he was equally successful in addressing an appellate court on abstract principles of law. One of the most notable cases in which Mr. Choate was engaged within recent years was what is popularly known as the "Income Tax case" (*Pollock* v. *Farmers' Loan and Trust Company*, 157 U.S. 429; 158 U.S. 601). The question involved was whether the Act of Congress of 1894 levying an income tax was constitutional. The case came before the United States Supreme Court by way of appeal from the United States Circuit Court of New York, which had delivered a judgment affirming the constitutionality of the Act. Mr. Choate was the leader for the appeal, in which he was supported by Messrs. Clarence A. Seward, Benjamin H. Bristow, William D. Guthrie, David Wilcox, Charles Steele, and Victor Morawitz; while the Attorney-General, for the respondents, was assisted by Messrs. George F. Edmonds, Samuel Shellaberger, Jeremiah Wilson, and James C. Carter—as able an array of counsel as has ever appeared before the United States Supreme Court. The case attracted universal attention, as it embraced important political as well as fiscal questions, and involved property interests to the value of thousands of millions of dollars.

Upon the first hearing of the appeal the Court was divided, but owing to the importance of the question an application for a re-hearing was granted, and upon the case being re-argued the Court held that the Act was unconstitutional. Mr. Choate may therefore be said to have established the momentous proposition that the American Government has no power to impose an income tax upon its citizens. It may not be out of place to add that the fee paid to Mr. Choate by his clients in this case was, according to common report in the profession, a record one in the United States, and probably anywhere in the world.

Although resolutely abstaining from holding office, Mr. Choate found time while in active practice to devote a large amount of energy and thought to the numerous patriotic and philanthropic public movements inaugurated by his fellow-citizens. He was a member of the committee of seventy which first successfully attacked the Tammany organisation in New York and overthrew the Tweed Ring. He was a constant supporter of the Municipal State and National Law Societies, and delivered numerous addresses on subjects connected with the legal profession before the law schools and universities. He was the President of the Constitutional Convention, to which the State of New York owes its present constitution.

NON-CHRISTIAN MARRIAGE.

(Second Article.)

[*Contributed by* Sir Dennis Fitzpatrick, K.C.S.I.]

Introductory.—In the number of this journal for August, 1900, an attempt was made to describe the leading varieties of non-Christian marriage,[1] and to explain the way in which marriages of the non-Christian type have been dealt with by the Courts in England. It was found that the decisions pronounced by those Courts up to the present time cover but a limited portion of the ground, and that, for the rest, the question of the treatment to be accorded to a non-Christian marriage, and of the extent to which effect can be given to the legal relations, rights, and duties springing, directly or indirectly, from such a marriage, is still an open one. It was accordingly proposed that, with a view to obtaining some assistance towards the solution of the problems which the non-Christian marriage presents to the civilised legislator or judge, we should look farther afield and see how those problems have been dealt with elsewhere, and that we should begin by considering the treatment of non-Christian marriage by the Christian Church.

It seemed well to start with this, because not only is the Canon Law the foundation of the laws of marriage now existing in the civilised world, but, further, such general notions on the subject of marital relations as we possess are in a great measure derived from the Church. It is true that we have to some extent broken with the Christian teachers, or at least with the majority of them, on certain matters—in particular on that of the civil marriage and on the great question of divorce; but this is a thing we can never safely do, even in dealing with the branch of the subject now under consideration, without fully understanding, and

[1] The expression "non-Christian marriage" was used in the article referred to (see p. 360) to denote all sexual unions which can be considered to be marriages, but which want one or more of the essentials of what English-speaking lawyers call "Christian marriage"; and the essentials of "Christian marriage" were stated (p. 359) to be (1) that it should be a union between one man and one woman to the exclusion of all others; (2) that it should be a union for the joint lives of the parties; and (3) that it should be based on the consent of the parties.

carefully attending to, their views ; for, though the jurisdiction over marriage has almost everywhere passed completely from their hands, their supremacy in the forum of conscience remains, and is at times apt to give rise to awkward conflicts. When, for example, you find a series of learned divines asserting one after another from generation to generation that polygamy and divorce are contrary to the law of God and to the law of nature, and can never be permitted except under a divine dispensation, it is hard to know how you stand until you have ascertained exactly in what sense, or in what variety of different senses, such propositions are understood, and on what ground of reason or authority they purport to rest. Further, it may be difficult to ascertain this without going back a good way into the history of the doctrine. As we were told by one of the speakers at a recent meeting of the Society of Comparative Legislation, it is sometimes impossible to carry on the study of comparative law without diverging to some extent into the sphere of historical jurisprudence, and that remark is peculiarly applicable here, because, as observed in a recent learned work,[1] the Christian law of marriage—putting aside a few dogmatic propositions—is for the most part of historical origin. One thing, however, I may promise, and that is that I shall take care to avoid being drawn into the theories or antiquities of our subject—however attractive they may be—except where they have a practical bearing on the questions before us. It need hardly be added that I shall treat theological opinions from a purely outside point of view, and studiously abstain from criticising them or expressing any opinion in their merits.

Difficulties of the Task.—But even with these limitations, the task before us—at least so far as the Canon Law and the later developments of it by Catholic theologians are concerned—is very far from being an easy one. It is, generally speaking, no very difficult thing to ascertain the law of a foreign State and the history of that law, so far as may be necessary for a purpose like ours, and to give a fairly correct statement of it in one's own language. But it is very different here. The Christian law of marriage involves elements transcending human reason, and partly owing to this, and partly owing to the restrictions under which the orthodox writers work, and to a certain peculiar traditional method of treatment adopted by most of them, it is very difficult reading to an outsider. Further, until Freisen's work above referred to appeared, no serious attempt seems to have been made by any ecclesiastic to deal with it in a bold and comprehensive manner from the historical point of view. The result is that a person who has never attempted to study the system as a whole, and who merely dips into it to find what he wants for his own particular purpose, is exposed at every turn to the risk of misunderstanding or overlooking something. Much assistance may be got from an independent interpreter

[1] *Geschichte des Canonischen Eherechts bis zum Verfall der Glossenlitteratur*, von Joseph Freisen, 1888, 2nd. ed. 1893, p. v.

like Esmein;[1] and Freisen's work, whatever theologians may think of its orthodoxy,[2] is very helpful as far as it goes; but it would have been beyond the scope of either of these very learned works to treat the non-Christian marriage in the detail requisite for our purpose, and we are accordingly compelled, while gratefully accepting their assistance wherever it is available, to trust, to a considerable extent, to an independent exploration of the recognised authorities. Under these circumstances it must only be hoped that, if this paper should fall into the hands of any learned canonist or theologian, he will deal mercifully with its defects.

Order of Treatment.—In discussing the various points that present themselves for consideration I shall adopt, as far as possible, the historical order—that is to say, after referring, when necessary, to the authorities of the primitive Church, I shall, as a rule, state first the views of the canonists and the Catholic theologians, and then those of the teachers of other churches. There is the more reason for adopting this course, inasmuch as the system in which the Catholic doctrine is embodied, though it has not been much studied in recent times by divines of other churches, has exercised one way or another a considerable amount of influence on them.

Position of Catholic and other Churches Contrasted.—And this leads to an observation, which will be found borne out later on—namely, that the position in which the Catholic Church stands in relation to the matters before us is in certain respects very different from that of the other Christian churches, and that each of these positions has its advantages and its disadvantages. The Catholic Church, besides possessing a systematised body of doctrine regarding these matters, has a most elaborate organisation. Even the humblest Catholic missionary one meets, *e.g.*, in India, has received at least some elementary training in Canon Law. If he is in doubt about any point, he is bound to refer to his bishop, who is commonly a man pretty well up in the subject and, at least at the principal centres, with a decent library available to him. If the bishop finds the point beyond him, he must refer it to Rome, where it will be dealt with, not only with the aid of the most learned canonists and theologians, but also in the light of a very wide experience, and with the most consummate worldly prudence. The result of this is that, in spite of the serious drawback to be next referred to, the Catholic priests are rarely found getting into trouble. But then comes the drawback, and it is this—that the Catholic Church is bound hand and foot by certain rules in relation to our subject which were laid down before the countries where chiefly they have to work were even discovered, and which do not admit of being sufficiently adapted to the new conditions

[1] *Le Mariage en Droit Canonique*, 1891.

[2] In the preface to his second edition (1893), Freisen retracts certain of his opinions, which seem to have been found inconsistent with the teaching of the Church; and until he rewrites his work it will be difficult to judge of his new position.

of things that from time to time present themselves. The result of this is not only that serious hardships may be inflicted in individual cases, but, further, that the Catholic Church, even when it is on the most friendly footing with the civil power, may be debarred from uniting with that power to solve some difficult problem. It may have to stand aside, saying, "Aliæ sunt leges Cæsarum, aliæ Christi; aliud Papinianus, aliud Paulus noster præcepit."

The other Christian churches stand in a different position; being bound by no systematised body of law, they have a freer hand in dealing with any new exigencies that may arise; but on the other hand, the absence of any such body of law to guide them places them under a certain disadvantage. They are left to make the best they can of the few texts to be found in the Bible bearing on the subject, and of the opinions of the earliest Christian teachers, which were delivered at a time when the law was still in a semi-fluid state, and were consequently often conflicting. Add to this that the Protestant missionary bodies are somewhat deficient in organisation, especially as regards the matter of efficient control over individual members, and it will be readily understood that inconveniently wide divergences of opinion are apt to arise, not only between different bodies, but even among the members of the same body, and that individuals occasionally take up eccentric and extreme views, and thus get themselves into trouble. In regard to one important question—that of the Pauline privilege—which we shall have to consider later on, Sir Henry Maine stated that there were at least a score of different speculative views prevailing among these missionaries in India, and it was more than once observed that some of them assumed powers exceeding those claimed by the Pope. Even within the pale of the Established Church we find wide variations of opinion on fundamental points, and the only attempt that appears to have been made in our time by the highest authorities to arrive at any settlement regarding them was that made at Lambeth in 1888. There does not appear to have been any treatise on marriage written in recent times by an Anglican divine until 1895, when Archdeacon Watkins's *Holy Matrimony* was published. It is avowedly a theological treatise, and is, like the works of the Catholic theologians, written chiefly with a view to the establishment of certain dogmatic positions, but it is a most learned and interesting book, and one for which we have all reason to be grateful.

The Christian Churches and Non-Christian Marriage.—Let us now see, to begin with, how the Christian churches have come to deal with marriages of the non-Christian type, and the footing on which they have, speaking generally, dealt with such marriages. In practice[1] such marriages would

[1] For the theory as to the powers of legislation and jurisdiction over unconverted infidels in respect of marriage, see Sanchez, *De Sancto Matrimonii Sacramento* (ed. 1739), lib. 7, disp. 1, n. 3, and disp. 3, and Perrone, *De Matrimonio Christiano* (ed. 1858), vol. ii. pp. 439 *et seq.* See also a curious hypothetical question, started in the course of the

present themselves for consideration to the authorities of those churches only in a way somewhat analogous to that in which a foreign marriage comes for consideration before one of our Courts. As foreigners, married abroad according to their own laws, may come into England, and a Court there may in consequence be called upon to consider how the law of England would treat the relations springing from one of their marriages, so, if an infidel, who has contracted a marriage under his own law, comes by conversion into the *Civitas Dei*, the Church may have to consider how, according to its law, the relations springing from that marriage should be dealt with. The comparison between the two positions is so obvious that it—or, rather, the converse of it—suggested itself to those who sat at the Council of Tribur in the ninth century ;[1] but we must be prepared to find the non-Christian marriage treated by the Christian Church on principles considerably different from those that would be applied by a Court of Justice in the present day to a foreign marriage. In the first place, though the Christian teachers deal with some questions, which may arise out of a non-Christian marriage, on principles similar to those of private international law, they proceed in dealing with others on theological doctrines, which claim to override, not only all such principles, but even those ordinary considerations of justice, morality, and convenience on which such principles are based. Again, even in the days when the ecclesiastical authorities had the matrimonial jurisdiction in their own hands, they did not act, in cases of the sort now referred to, as judges pure and simple, sitting to do justice all round to all parties concerned. They acted also as the heads of a society, the supreme object of which was to bring all mankind within its pale. This being so, it was only natural that they should, in dealing with the various questions that presented themselves, lean strongly, as the saying is, *in favorem fidei* ; and that it is a principle with them to do so is frankly avowed down to the present day by Christian teachers of all denominations. Further, it would very commonly happen that one of the parties concerned in a case would be seeking admission to the Church, while others were obstinate infidels. Under such circumstances the spiritual welfare of the former party would be the paramount object, and next after that would come the

discussion on the great Florentine case of 1727, as to whether the Pope would have power to dissolve a marriage between two unconverted infidels on their applying to him to do so (Kutschker, *Das Eherecht der Katholischen Kirche*, 1856, vol. i. p. 412). The passage runs as follows: "1. Quando ambo conjuges infideles non solum contraxerunt et consummarunt matrimonium in infidelitate, sed etiam dum actu sunt infideles instant pro ejus dissolutione ; et in hoc primo casu (qui potius videtur idealis quam practicus) negativa responsio tutissima esse videtur : ut inquit Apostolus 'Quid ad nos de his quæ foris sunt judicare.'" See also Feije, *De Impedimentis et Dispensationibus Matrimonialibus*, 1874, § 601. All discussions of this kind are of little importance for the purposes of the practical questions before us.

[1] "Cum enim in baptismo transmigrat de vita in vitam, et non mutat uxorem legitimam, quomodo mutat eam, qui non mutat vitam, sed transit de gente ad gentem," quoted by Watkins, p. 531.

importance of making everything as easy as possible to that party from the worldly point of view. The result to the others [1] would be less considered, except in so far as it might affect the prospect of their ultimate conversion. All this, as will be seen later on, contributed to the establishment in some cases of principles of law widely different from ours, and to which it would be difficult for the civil legislator or judge to accommodate himself.

"Non-Christian Marriage" and "Infidel Marriage."—Having made these preliminary observations, I shall now proceed to consider the classes of cases with which the authorities of the various missionary churches have had to deal, and in doing so it will be convenient to adopt the phraseology of our authorities, and speak, not of "non-Christian marriage," as I have hitherto been doing, but of "infidel marriage" or "marriage between infidels." It will come practically to the same thing, because though, as explained in my previous article,[2] you may have a Christian marriage between infidels, or a non-Christian marriage between Christians, all the marriages with which we are concerned here are, as a matter of fact, non-Christian marriages between infidels.

The Infidel Marriage a True Marriage.—To begin with the simplest case of all. A man and a woman, infidels, and neither of whom has been married before, marry according to their own law, and during the continuance of the marriage both are converted together to Christianity. How will the Church treat their marriage? Esmein [3] tells us that the view generally taken by the highest authorities from a very early period was that the marriage was valid and binding, and since the twelfth century this has been regarded as beyond dispute. Turning to the authorities commonly referred to, we find the infidel marriage spoken of as *verum matrimonium*. Those united by it are regarded as persons *quos Deus conjunxit*.[4] It is even in a certain wide sense of the word a "sacrament." [5] It falls short, however, of marriage between Christians, inasmuch it is only *legitimum*, not *ratum*, or a sacrament in the narrower and more proper sense of the word.

—— **Not Dissolved by Conversion to Christianity.**—The degree of indissolubility attaching to it is lower; but it is not dissolved by the conversion of the parties. The common saying, current in one form or another at least from the fifth century, was to the effect that sins are wiped out, but marriages are not dissolved, by baptism.[6] When an infidel husband and his wife are baptised their marriage becomes *ratum*, or a sacrament in the proper sense, and, according to the opinion generally received, and it is

[1] Those others would have to thank themselves for the results, whatever they might be. Thus Sanchez says (lib. 7, disp. 73, n. 9): "Hinc deducitur infidelem, qui non convertitur una cum altero conjuge, ad fidem reducto, peccare in Deum et in legem matrim., ut ait D. Ambr. Quia jus ipsum Divinum suscipiendi baptismum, quod omnes obligat, astringit in hoc eventu infidelem illum peculiari ratione matrim."

[2] P. 360.

[3] Vol. i. p. 221.

[4] C. iv. X. iv. 14.

[5] C. viii. X. iv. 19, *post*, p. 166.

[6] See, *e.g.*, *ibid.*

believed universally acted on in practice, that change takes place *ipso facto*, no fresh contract or renewal of vows being necessary.[1]

The above view of the position seems to be accepted also by the responsible authorities of the Anglican and other Protestant churches, though, with the freedom of judgment allowed in those churches, it is only natural that some differences of opinion should be found among their members. As a matter of fact, we find some prominent members of those churches going even farther than the Catholic Church in insisting on the binding nature of the infidel marriage, while others, on the contrary, have been inclined to put it lower, or even to throw aside such marriage altogether as a thing unworthy of the name.

Polygamy and Divorce.—We have next to consider a case by no means so simple, which has given rise to much discussion from the beginning of the thirteenth century down to the Lambeth Conference of 1888, and which seems likely to give rise to further discussion before long—I mean the case of an infidel belonging to a polygamous community, and who at the time of his conversion has more than one wife. And in connection with this case it will be convenient to refer to another, which, though it might seem to us a comparatively simple one, has been so treated as to give rise to somewhat similar difficulties—I mean the case of a man who becomes converted to Christianity having, before his conversion, married a woman and divorced her in accordance with the law of the community to which they belong.

Converted Polygamist—Practical Difficulties.—The question that arises in the former case is, whether the convert shall be allowed to retain all his wives, or whether he shall be required to restrict himself to one, putting away the others; and this question will be seen, even when looked at from the simple, practical point of view of the unlearned man, to be a very perplexing one. On the one hand, there is the consideration that a plurality of wives is most repugnant to the Christian ideas of marriage and of the position of women, and that to allow a man, who has become a Christian, to live with more than one wife would give rise to what may be called a scandal, and might, moreover, tend to encourage lax views. On the other hand, there is the consideration that it is a most serious matter to insist on the disruption of family ties contracted under the sanction of any system of law, even though that system does not stand very high in the scale of civilisation. Some unreflecting persons are apt to make light of this latter consideration. They speak as if they supposed that, in requiring a polygamist convert to put away all his wives but one, we should be merely compelling him to forego an excessive and vicious indulgence. They seem to forget that, when you insist on a polygamist putting away a wife, you break up family relations, and that you may thus be inflicting hardships, not only on the man, but also on the woman, and on the children she may

[1] Sanchez, lib. 2, disp. 9; Pirhing, *Jus Canonicum*, 1678, lib. 4, tit. 1, n. 7; Perrone, vol. ii. pp. 296 *et seq.*

have borne him. There is, moreover, the danger that if you compel a man to put away his wife, you may throw her into immoral courses.

Varieties of Polygamy.—No doubt the weight of considerations of this latter class, both in themselves and as compared with considerations of the former class, may vary much, according to the nature of the polygamous institution in the particular community with which you are dealing. Where you have what we may call a grosser form of polygamy—a system which allows a man to marry an indefinite number of wives, who are regarded rather in the light of slaves than of wives, whom he is ready to give or lend to a friend as freely as if they were cows or horses, and who would be only too glad to avail themselves of any chance of being released from their bondage—the evils of requiring him to put them away would not (still looking at the matter from the same simple, practical point of view) be very serious, while at the same time the scandal of allowing him to retain them all after his conversion would be almost intolerable. But the position would be widely different where the polygamy is of what may be termed a less gross kind—where the law of a people admits only of a more restricted and better regulated polygamy. There are, for example, communities in India and in China among which a man marries a second wife only if his first wife proves barren, and then with a view to fulfilling a religious obligation incumbent on him to beget a son. Again, under the Mohammedan law, though a freer indulgence in polygamy is permitted, a man is restricted to a maximum of four wives, and, though it is legally competent to him to divorce them at his mere pleasure, the exercise of this right is regarded as hateful to God[1] and as bringing shame on the whole family. It sometimes happens that under such systems of law one of the wives—not necessarily the wife first married—has from a social point of view a status superior to the others, but the tie which exists between the others and the husband may, nevertheless, be such that to insist on the severance of it would be almost, if not quite, as serious a matter as to insist on the severance of the tie between a member of a monogamous community and his one wife. It is the more important to bear in mind these differences between different polygamous systems, because the wide divergences of opinion which, as we shall see later on, have arisen between those religious teachers, who have been content to consider the question chiefly from this plain practical point of view, seem in many cases to be due to the accidental circumstance that one set of those teachers has come in contact with polygamy in its grosser and another with polygamy in its less gross form.

Law of the Gospel.—Going on now to consider how this question has been dealt with by the Church, it is to be observed that the law of the

[1] Even the "Spurcissimus Mahumetus," as Sanchez thinks fit to call him, declared that "the thing which is lawful but disliked by God is divorce" (Hughes, *Dictionary of Islam*: "Divorce"). His saying is doubtless an echo of Malachi ii. 16.

Gospel, unless it can be deemed applicable to unconverted infidels,[1] contains nothing having any direct bearing on the case we are considering; for, though it may be assumed that that law, at least by implication, forbids a Christian to marry a second wife during the continuance of his marriage with the first, it obviously cannot be argued from this that the converted polygamist must put away a wife married before his conversion.

Practice of Early Church Undiscoverable.—That being so, it is natural to turn for guidance to the practice of the early Church, but, strange to say, the records of the Church for the first twelve centuries seem to be absolutely blank so far as this matter is concerned. That nothing should have been heard of it in the earliest days of Christianity is not so much to be wondered at, because the people with whom the Church came in contact in those days were almost always monogamists, or else polygamists who had well-nigh abandoned the practice of polygamy;[2] but as time went on and the sphere of Christianity expanded, cases of polygamist converts coming over with more than one wife must have often occurred, and nevertheless no discussion on the point appears to have come down to us. Two diametrically opposite suggestions have been put forward to account for this. Those in favour of allowing the converted polygamist to retain his wives have suggested that the silence is due to the fact that in the early days of the Church he was allowed, as a matter of course, to do so; while those who take the other view have suggested that the silence is due to his having been always required, as a matter of course, to part with all but one. There is a third possible explanation—namely, that in the days before the law began to be systematised, and local branches of the Church were left more to their own devices, each branch dealt with such cases pretty much as missionaries of the various Protestant denominations until recently did in India and elsewhere—that is to say, by simply doing as might seem best under all the circumstances, without raising any questions of principle for the consideration of the higher authorities. It is for those who are familiar with Church history to weigh the respective probabilities of these suggestions; but one thing seems pretty clear—namely, that at the beginning of the thirteenth century the question was regarded as an open one, for as such we find it treated in the celebrated letter of

[1] As to which see *post*, p. 173.

[2] So it is said by those most competent to speak on the point; but possibly it is somewhat too broadly stated. In Barbeyrac's *Morale des Pères*, chap. iv. § 22, we read: "Quoique Jésus-Christ eut condamné la licence des divorces tolérée par la loi de Moïse il était difficile que les Juifs convertis ne se trouvassent pas souvent dans le cas. Il pouvait même y en avoir, qui avoient en même temps plusieurs femmes; ce qui, quoique défendu par le droit Romain, fut permis aux Juifs jusqu'au règne de Théodose I." An authority he quotes in support of this latter suggestion is leg. vii., *Cod. de Judæis*, etc.; but he apparently means to refer to l. vi., which is headed "nuptiæ inter Christianos prohibitæ, similiter inter Judæos prohibentur, sua lege cessante," and runs as follows: "Nemo Judæorum morem suum in conjunctionibus retineat, nec juxta legem suam nuptias sortiatur, nec in diversa sub uno tempore conjugia conveniat." The date is about A.D. 393.

Pope Innocent III. commonly cited as "Gaudemus,"[1] which seems to be the first authoritative utterance that has come down to us.

Innocent III. and his Letter "Gaudemus."—That letter was written by Innocent III. in the year A.D. 1200 in reply to a reference from a bishop. The only question raised by the reference was one, with which we are not now directly concerned, as to the proper way of dealing with an infidel couple married within the degrees prohibited by the law of the Church as distinguished from "the law of nature," and then coming over to Christianity; but the Pope, who was himself a great canonist, and who had evidently been turning over in his own mind various problems connected with the infidel marriage, deemed it well to communicate his views on several of these problems, and among others, on that now before us. As it will be necessary to refer to his letter in connection with other points as well, it is given in a note below[2] as it stands in Friedberg's *Corpus Jur. Can.*, and for facility of reference the portions of it relating to the different questions treated have been marked off and numbered.

[1] C. viii. X. iv. 19, and c. xv. X. iv. 17.

[2] (1) Gaudemus in Domino, etc.—Utrum pagani uxores accipientes in secundo vel tertio vel ulteriori gradu sibi conjunctas, sic conjuncti debeant post conversionem suam insimul remanere vel ab invicem separari, edoceri per scriptum apostolicum postulasti. Super quo *fraternitati tuæ* taliter respondemus, quod, quum sacramentum conjugii apud fideles et infideles existat, quemadmodum ostendit apostolus dicens, "Si quis frater infidelem habet uxorem, et hæc consentit habitare cum eo, non illam dimittat," et in præmissis gradibus a paganis quoad eos matrimonium licite sit contractum, qui constitutionibus canonicis non arctantur (quid enim ad nos secundum apostolum eundem de his quæ foris sunt, judicare?) in favorem præsertim Christianæ religionis et fidei, a cujus perceptione per uxores se deseri timentes, viri possunt facile revocari, fideles hujusmodi matrimonialiter copulati libere possunt et licite remanere conjuncti, quum per sacramentum baptismi non solvantur conjugia sed crimina dimittantur (c. viii. X. iv. 19).

(2) Quia vero pagani circa plures insimul feminas affectum dividunt conjugalem, utrum post conversionem omnes, vel quam ex omnibus retinere valeant, non immerito dubitatur. *Quia vero tam patriarchæ quam alii justi vir ante legem pariter et post legem multas uxores insimul habuisse leguntur, nec contrarium apparet in evangelio vel lege præceptum, neque pagani subjiciuntur canonicis institutis post inventis, quemadmodum est præmissum: videtur, quod nunc etiam juxta ritum suum licite contrahant cum diversis, quorum conjunctiones legitimas unda sacri baptismatis non dissolvit et ita patriarcharum exemplo ad fidem Christi conversi pagani conjugiorum pluralitate gaudebunt.* Verum absonum hoc videtur et inimicum fidei Christianæ, quum ab initio una costa in unam feminam sit conversa, et scriptura divina testetur quod propter hoc relinquet homo patrem et matrem et adhærebit uxori suæ, et erunt duo in carne una; non dixit tres vel plures sed duo; nec dixit "adhærebit uxoribus" sed "uxori." *Unde Lamech, qui plures simul uxores legitur habuisse, reprehenditur in scripturis eo quod ipse primus reprobandam bigamiæ speciem introduxit. Licet autem de his non quæsieris, volentes tamen tam te quam alios super his etiam reddere certiores, et quod veritas prævaleat falsitati sine dubitatione qualibet protestamur quod* nec ulli unquam licuit insimul plures uxores habere, nisi cui fuit divina revelatione concessum, quæ mos quandoque interdum etiam fas consetur, per quam sicut Jacob a mendacio, Israelitæ a furto, et Samson ab homicidio, sic et patriarchæ et alii viri justi, qui plures leguntur simul habuisse uxores, ab adulterio excusantur. Sane veredica hæc sententia probatur etiam de testimonio veritatis testantis

His Treatment of Polygamy.—It will be seen—passage marked (**2**)—that the Pope treats the question of the converted polygamist as an open one, and approaches it in a spirit of fairness. He begins by stating the arguments in favour of allowing the convert to retain all his wives. He does not, indeed, refer to the hardship or injustice of compelling the convert to break his contracts with any of these women, but he adverts among other matters to the permission of polygamy to the patriarchs and other just men, to the fact that the polygamous marriages contracted by the convert were contracted according to the law under which he lived, and to the principle which, as we have seen, had been laid down long before his time, that the water of baptism does not dissolve legitimate unions; nevertheless, he goes on to rule that the convert should not be allowed to retain more than one wife, and he has always been understood—and doubtless rightly—as meaning that the wife first married was the one to be retained. What the intrinsic authority of this ruling was at the moment it was sent forth—whether the Pope should be considered to have written it *ut Papa* or merely *ut magister*—is now a question of little practical importance, for, as it has been treated as law and acted on as such for seven hundred years, we may feel quite sure that it will never be overruled.

Grounds of his Ruling.—So far all is simple enough, but now comes the question as to the grounds on which this ruling was based. If we look to the first case dealt with in the letter—that of persons married before their conversion within the degrees prohibited only by the law of the Church—we find the Pope applying to it principles resembling those of private international law as nowadays understood, and disposing of it much in the same way as we should generally dispose of an analogous case arising in respect to a foreign marriage. He says, in effect, that the marriage was good under the law of the community to which the parties belonged at the time it was contracted, that the canonical constitutions did not then apply to them,

in evangelio. "Quicunque dimiserit uxorem suam *nisi* ob fornicationem et aliam duxerit, mœchatur." Si ergo uxore dimissa, duci et alia de jure non potest, fortius et ipsa retenta; per quod evidenter apparet, pluralitatem in utroque sexu, quum non ad imparia iudicentur, circa matrimonium reprobandam (c. viii. X. iv. 19).

(**3**) Ceterum prolem de infidelium conjunctionibus natam, qui secundo tertio vel ulteriore gradu secundum opinionem illorum matrimoniali contraxerunt affectu, post fidem receptam, utilitate publica suadente, legitimam volumus reputari (c. xv. X. iv. 17).

(**4**) Qui autem secundum ritum suum legitimam repudiavit uxorem, quum tale repudium veritas in evangelio reprobaverit, nunquam ea vivente licite poterit aliam, etiam ad fidem Christi conversus habere, nisi post conversionem ipsius, illa renuat cohabitare cum ipso, aut etiamsi consentiat, non tamen absque contumelia creatoris, vel ut eum pertrahat ad mortale peccatum; in quo casu restitutionem petenti, quamvis de injusta spoliatione constaret, restitutio negaretur, quia secundum Apostolum frater aut soror non est in hujusmodi subjectus servituti. Quod si conversum ad fidem et illa conversa sequatur, antequam propter causas predictas legitimam ille ducat uxorem, eam recipere compelletur. Quamvis quoque secundum evangelicam veritatem qui duxerit dimissam mœchatur, non tamen dimissor poterit objicere fornicationem dimissæ pro eo, quod nupsit alii post repudium, nisi alias fuerit fornicata (c. viii. X. iv. 19).

and hence it should be held good after their conversion. As he asks (quoting 1 Cor. v. 12), "Quid enim ad nos de his, quæ foris sunt, judicare?" But when he goes on to deal with the question of the second polygamous marriage, the grounds of his decision are by no means so clear. It might be suggested that here again he was proceeding on some principle similar to those with which we are familiar—that, notwithstanding certain expressions[1] used in his somewhat discursive treatment of this question, all he meant to decide was that, though the second polygamous marriage might be valid according to the law under which it had been contracted, and might be binding so long as the parties continued to live under that law, it was so completely repugnant to the fundamental ideas of the Christian law that, when one of the parties to it came over to the Christian Church, and submitted it for consideration to the authorities of that Church, it would be impossible for those authorities to allow it any effect. Now, if the Pope's ruling were held to be based on a principle of that kind, though we might possibly have had something to say about his method of working out that principle, his view would have been readily intelligible to us.

Theory of a Higher Law Forbidding Polygamy to Infidels.—But as a matter of fact, his ruling seems to have been commonly understood by canonists and theologians[2] to rest on a different ground, and one which to us is somewhat startling—namely, on the ground that the polygamist's marriage with his second wife in the lifetime of the first must be regarded as *ab initio* void. And it is to be observed that the way these learned persons put the matter is not merely that the authorities of the Christian Church are bound by some special law governing their own action, to treat such a marriage whenever it may happen to come within their cognisance *as if it were*, ab initio *void*,[3] but that the marriage actually was *ab initio* void by virtue of some law directly applicable to the parties, and to which they owed obedience, at the time it was contracted—some law applicable to the whole human race, and of so high a nature that, unless its operation were suspended by a divine dispensation, it would override the laws of any infidel community, and, in spite of anything contained in those laws, make polygamy absolutely unlawful for the members of that community. The law of the infidel community is in fact treated very much as if it was a law enacted by some subordinate legislature, and which, if inconsistent with the law of the superior legislature, would be *ultra vires*.

[1] In particular the passage so commonly quoted, "nec ulli unquam licuit insimul plures uxores habere, nisi cui fuit divina revelatione concessum."

[2] Sanchez, lib. 7, disp. 80; Pirhing, lib. 4, tit. 1, n. 127 *et seq.*, and tit. 19, n. 44; Benedict XIV., *De Syn. Diœces.*, lib. 13, cap. ii. §§ 8 and 9; Perrone, vol. ii. pp. 314 and 443, and vol. iii. pp. 23–61; Kutschker, vol. i. pp. 11–17. Cf. Suarez, *De Legibus*, lib. 2, cap. xii., n. 3 and 4.

[3] Somewhat as one of our Courts might perhaps be bound by the Royal Marriage Act to treat as void a marriage celebrated in a foreign country between foreigners domiciled there. See Dicey's *Conflict*, p. 641.

Question as to Validity of Polygamist's First Marriage.—Now an English lawyer, with the "potentially polygamous marriage" and the Baralong case[1] in his mind, might be inclined to ask whether, if there is a higher law of this kind persistently adhering to all human beings, however far they may be wandering from the true fold, the effect of it would not be to make void even the polygamist's marriage with his first wife, which would undoubtedly have been understood by the parties to it to be a polygamous marriage. But the answer of the canonists would be in the negative. They would as a rule say that the parties to the first marriage meant to contract a marriage and that the higher law would come in and make it a monogamous marriage.[2] It would thus be a valid marriage, and, as such, a dirimant impediment to the subsequent marriages. In short, the canonists, in dealing with the polygamist's marriage with his first wife, did, for all practical purposes, the very thing that it has been held to be out of the question for our Courts to do. They saddled the parties with a marriage substantially different from that contemplated by their marriage contract.

But whatever we may think of the view of the canonists in regard to this matter, it is a view that seems to have been always maintained and consistently pushed by them to its logical consequences. Thus, when a converted polygamist is to continue his cohabitation with his first wife, no further contract or ceremony is deemed necessary to make them husband and wife. On the other hand, when the converted polygamist becomes free to dissolve his marriage with his first wife under the Pauline privilege (to be hereafter referred to), and thereupon proposes to cohabit with his second wife, it is necessary that he should formally contract a fresh marriage with her.[3]

[1] See this journal for August, 1900, pp. 383 *et seq.*

[2] It may be well to explain that a marriage would be held void by the canonists if the parties to it *expressly* embodied in their contract any terms inconsistent with the essentials of marriage as conceived by the Church—as, *e.g.*, if it was expressly provided that the husband should be free to indulge in polygamy, or that the marriage should be temporary or dissoluble. But it would be different if such terms were not expressly embodied. It is no doubt held, at least as regards terms affecting the permanency or indissolubility of the marriage, that an actual intention to contract subject to them, though not expressed, might reduce the contract to a mere nullity; but the canonists and theologians are extremely loth to impute such an intention; and in particular they would not impute an intention to contract a dissoluble marriage merely on the ground that the parties were perfectly well aware, at the time of contracting the marriage, that the civil law under which it was contracted made it dissoluble. Speaking generally, they raise so strong an artificial presumption in favour of an intention to contract what the Church would regard as a true marriage that the statement of the position given above is for practical purposes sufficiently accurate. See Ballerini, *Opus Theologicum Morale*, vol. vi. pp. 225–237. Bethell's marriage would have been held void by the canonists on grounds altogether independent of those here referred to. *Query*, would it, having regard to its peculiar circumstances, have been held void by them on these latter grounds also?

[3] Sanchez, lib. 7, disp. 73, n. 5; Feije, §§ 477 and 483.

The Theory Disputed but Maintained.—This theory of a higher law binding on infidels while still unconverted did not, however, always pass unchallenged. Some authorities seem to have propounded a different one—namely, that infidels did nothing wrong in marrying several wives and living with them up to the time they came by their conversion under the law of the Gospel, and that it would be only by retaining more than one wife after that that they would do wrong. But to hold such views was declared[1] to be a thing *temerarium ac errori proximum*, and not to be "tolerated," and the reason given by Sanchez for this is worth noting, not only because it brings out the orthodox opinion into clearer light, but also because it indicates one of the considerations which seems to have contributed to the formation of that opinion. The reason is, in effect, this—that, as we have already seen, the Church had a strong sense of the sacredness of marriage, even when contracted between infidels, and the maxim had been constantly insisted on that "baptism does not dissolve a marriage." If, then, a second or subsequent polygamous marriage, standing the first, was held to be good up to the time of the conversion, how could it be treated as void after the conversion? If it was to be got rid of at all, as Innocent III. had undoubtedly held it should be, that could only be done on the ground that it was void *ab initio* under some higher law binding on the infidels even while unconverted.

Case where One of a Polygamist's Wives is Converted.—I have been speaking up to this of the case where the polygamist himself is converted, but there is also the converse case, which, as we shall see later on, was specially considered by the Lambeth Conference of 1888—I mean the case where it is one of his wives that is converted. I have no reference to any mention of this case by the Catholic authorities, but that is perhaps because the mode in which it should be dealt with seems obvious from what has been already said. The first married wife is a true wife, and consequently, if she is converted, she must continue to live with her husband. On the other hand, any wife subsequently married during the continuance of the marriage with the first is in the eyes of the Church no wife, and if she is converted, she must separate from her husband.

Theory of a Higher Law Forbidding Divorce to Infidels.—This idea of a higher law binding the unconverted infidel is brought out into even stronger light by the case of a divorce preceding the conversion which is referred to above, and which will be found among those dealt with by the letter of Innocent III.—portion marked (**4**). This case—which, like that we have just been considering, was dealt with by the Pope of his own motion, and without its being raised by the bishop—may be put as follows: An unconverted infidel, whom we may call A, marries an unconverted woman, whom we may call W, according to the law of their community. Subsequently A divorces W according to the same law, and she marries

[1] See Sanchez, lib. 7, disp. 80, n. 14.

another man, whom we may call B. Then A is converted, and afterwards W is converted. The question is whether W is to be treated as the wife of A or as the wife of B. To the ordinary man it might seem that the answer was obvious. He would probably say that W's marriage with A having been dissolved under the very law under which it had been contracted, the dissolution of it should be accepted as an accomplished fact, and that her subsequent marriage with B should be held good. This course, it might be added, would not, like allowing a convert to retain more than one wife, in any way tend to shock the feelings of the Christian community. But the Pope took a different view. He ruled that the divorce should be treated as null, and that W should leave B and return to A, who should resume cohabitation with her. One could hardly conceive such a rule being strictly enforced in dealing with converts from an infidel community in which the practice of divorce was common. Think, for example, what the effect of it would have been in the Roman world in the early days of the Church, when, among the unconverted, husbands were given to changing their wives and wives their husbands as readily as they changed their garments. But however this may be, the ruling of Innocent III. in this case is regarded as absolutely binding, and, like his ruling on the case of the converted polygamist, is held [1] by the text writers to rest upon a law higher than any law of the infidel community, and applicable to the members of that community while still unconverted. As in that case, so in this, the theory is pushed by those writers to its logical consequences. If, for example, an infidel who has divorced his first wife and married another is converted, and then the tie which is held still to bind him to the first becomes dissoluble, as it might under the Pauline privilege, he would, before being allowed to live with the second wife, be required to formally contract a fresh marriage with her.[2] As observed above, the operation of the higher law is even more striking here. In the case of the converted polygamist, the Church merely refuses to recognise the validity of a certain marriage; but here it further insists on maintaining the continued existence of a marriage that has been put an end to by the infidel law under which it was contracted, and which moreover is the only human law that could conceivably apply to it.[3] It would be only one step more to hold that the

[1] Sanchez, lib. 2, disp. 13, and lib. 10, disp. 1; Pirhing, lib. 4, tit. 1, n. 137, 138, and tit. 19, n. 47 and 49; Perrone, vol. ii. p. 443, and vol. iii. pp. 115–160; Kutschker, vol. i. pp. 11–17; Feije, §§ 480 and 602.

[2] Sanchez, lib. 10, disp. 1, n. 11, and lib. 7, disp. 73, n. 4.

[3] It is somewhat puzzling to find Pirhing, in the face of all this, maintaining the position that an infidel's right to divorce his wife *a vinculo* for adultery would be recognised by the Church. In commenting on the words "nisi alias fuerit fornicata" at the end of the letter Gaudemus, he writes as follows (lib. 4, tit. 19, n. 48): "Tertia pars quod talem mulierem infidelis, si fuerit fornicata, maritus ipsius potest dimittere, non solum quoad torum, sed etiam quoad vinculum, probatur, quia eo ipso, quod talis mulier committit adulterium, etiamsi postea conversa fuerit ad fidem, acquiritur marito jus eam omnino dimittendi, ita ut aliam ducere possit, quia per baptismum postea secutum non

Church might insist on treating as a marriage a sexual union between infidels which, according to their law, never was a marriage at all; and at least one writer of eminence—Perrone—goes as far as this.

Perrone's Extension of the Higher Law to Other Matters.—According to Perrone [1] the question is not merely one as to polygamy and divorce. He holds that among infidels as well as among Christians the whole subject of the marriage bond—the question whether a given sexual union is or is not a marriage—is governed completely and exclusively by a higher law, and that no civil power can in any way interfere with it. Thus the law of an infidel community cannot create any dirimant impediment to marriage. It cannot, *e.g.*, make void a marriage between persons of different ranks or castes, or a marriage entered into without certain consents. It may prohibit such marriages, and penalise them, or deprive them of civil consequences, but it cannot make them void, and if it purports to do so, the Church must treat it as *pro tanto*, *ultra vires*.

Practical Effects of the Theory of the Higher Law.—But to return to the matters of polygamy and divorce, it may be asked, of what practical importance is this theory of a higher law prohibiting polygamy and divorce to infidels while still unconverted? Would not the position have been practically the same if the canonists and theologians had, *e.g.*, adopted the alternative view, which, as mentioned above (p. 170), they condemned as not to be tolerated? The answer seems to be that if they had adopted the latter view, they would not only, as already explained, have run counter to their maxim that baptism did not dissolve a marriage, but they would, further, as time went on and broader views began to prevail, have found themselves face to face with the perplexing questions which have so much exercised Protestant theologians in our day. If a second polygamous marriage, or a marriage of one of two divorced infidels during the lifetime of the other, were to be regarded as valid when contracted, a grave doubt might arise, as we have already seen (pp. 163–4), as to whether it would be decent or just to set it aside upon the conversion taking place, especially where doing so would inflict hardship on an unconverted person; whereas if such a marriage is regarded as *ab initio* void, and the parties to it as living from the first in mere fornication, it would seem to be a matter of course to separate them without regard to consequences.

tollitur maritale jus jam acquisitum, dum adhuc ipsa infidelis esset, quia per baptismum non tollitur jus alterius, nec beneficium alteri competens—Gl. fin. in cit. c. Gaudemus—quamvis omne peccatum, quod quis in se commisit per baptismum deleatur."

A learned Catholic theologian to whom I have mentioned this holds, and no doubt rightly, that it involves a total misconstruction of the Pope's words, which permit only separation *a mensa et toro*; but it is curious and interesting to find that, so far back as the time of the glossators—for it is to some of them Pirhing seems to refer—the idea of the "right duly acquired" should have presented itself to some canonists, and that, apparently, as a generalisation from the saying that baptism, though it wipes out sins, does not dissolve a marriage.

[1] Vol. ii. pp. 439 *et seq.* Feije seems to accept his views: §§ 67–70.

Another practical result of the Catholic teachers adopting the theory they did is that the position of the Church with reference to these infidel marriages became fixed for all time. If the questions dealt with by Innocent III. had been regarded simply as questions of a conflict between the law of the community, in which the marriage had been contracted or the divorce effected, and the law of the Christian community to which the convert was migrating, the rulings upon them would have been open to modification later on in the light of further experience and further developments of juristic science; but once the view became established that polygamy and divorce were forbidden by some higher law applicable to infidels while unconverted, the door was closed against further discussion.

What are the Higher Laws Referred to?—I have, up to this, spoken of the prevailing theory simply as one to the effect that polygamy and divorce are forbidden to all mankind by *some* laws of so high a nature that nothing short of a divine dispensation can warrant any exception being allowed to them. We have next to consider what the laws thus referred to are, and for the answer to this question we must look chiefly to systematic treatises like those of Sanchez and Pirhing, and others who have followed later, more or less closely in their footsteps. On turning to such works we find that the following are the laws referred to in this connection:

(1) The "law of nature" in a peculiar sense, to be presently explained, and which when properly understood stands clear of everything in the way of revelation or positive law.

(2) A law implied in the original divine institution of marriage in the Garden of Eden.

(3) The law of the Gospel.

It is obvious that if the law of the Gospel in regard to matters of the kind here in question can be held to apply to all infidels, the position becomes very simple, for that law, as interpreted by the Catholic Church, undoubtedly prohibits polygamy and divorce; and some teachers have held that it does so apply. Thus Perrone, who, as we shall see farther on, contends that the first two laws above mentioned do not prohibit polygamy in the stringent way commonly supposed, gives[1] as the reason for requiring a converted polygamist to put away all his wives but the first, that such a man was, even while unconverted, bound by the law of the Gospel. He might, Perrone says, if ignorant of that law, be in some way excused from sin in marrying more than one wife, but he could not do so *absque piaculo*—a phrase which it seems safer to leave untranslated. It may be asked, how can the great bulk of the infidels in the world be held to be in any sense whatever bound by a positive law which, so far as they are concerned, might as well have been promulgated only in the planet Mars? But that is a difficulty which is not confined to the view now referred to. A somewhat similar difficulty arises also in

[1] Vol. iii. p. 61.

connection with the law implied in the original divine institution of marriage, which is commonly held to be binding on the unconverted infidel. Now it would be possible to refer to discussions having more or less bearing on this point, but it seems enough to say that the applicability of all such divine laws to any portion of the human race must ultimately depend on the intention of the omnipotent Law-giver, and that is a matter which we must leave to theologians to determine.

Question of the Application of the two Primæval Laws.—There will be more to say later on about Perrone's views; but it is convenient to consider first the views of others who rely in this connection only on the law of nature and the law of the original divine institution—the primæval laws, as we may call them—and who refer to the law of the Gospel chiefly as casting a reflected light on those older laws. Among these are Sanchez and Pirhing, who are regarded as high authorities in their respective spheres, and both of whom expressly hold that (except, perhaps, in one particular to be hereafter referred to) the law of the Gospel on this subject does not apply to the unconverted infidel.[1]

Toleration of Polygamy and Divorce under the Old Law.—It may be observed here that orthodox writers in treating of these primæval laws have always to take account, among other things, of the toleration shown to polygamy and divorce under the old law. The problem they have to solve is that of finding a law against polygamy and divorce prevailing from the first appearance of man on earth, but which will at the same time not be of so stringent a nature as to make it inconceivable that polygamy and divorce would be tolerated in the case of the chosen people of God, and above all in the case of the patriarchs, who stood high in the divine favour. This has always been a delicate point to deal with. As Freisen somewhere observes, the early fathers were much exercised about it, and Perrone in our own day seems, in shaping his theories relating to polygamy and divorce, to have been mainly influenced by a regard to it.

Important to Keep the two Primæval Laws Separate from one another.—Another matter which it seems well to mention here is that writers,

[1] Thus Sanchez says: "Et confirmatur quia, si sola lege Evangelica positiva esset interdicta hæc uxorum pluralitas, minime ligare infideles, ac proinde illis licita nunc esset. Cum ante susceptum baptisma peculiaribus populi Christiani legibus minime adstringantur" (lib. 7, disp. 80, n. 8). Again, speaking of the nullity of a man's marriage with a second wife during the lifetime of the first, he says: "Itaque dico esse irritum respectu infidelium [non?] propter legem positivam Christi; ea enim non obligat infideles ante susceptum baptisma, sed propter jus divinum naturale id irritans," etc. (*ibid.* n. 14). Again, speaking of the prohibition of divorce, he says: "Quod si objicias, cum hoc sit speciale legis Evangelicæ præceptum, non videntur infideles ad ejus observationem constringi, donec baptizentur; sicut nec tenentur ad confessionem nec ad alia præcepta positiva evangelii, dempto baptismi præcepto. Solutio est facilis. *Id enim verum est de præceptis mere divinis.* At præceptum de indissolubilitate matrimonii est juris naturæ et divini," etc. (lib. 10, disp. 1, n. 9). See similar passages in Pirhing, lib. 4, tit. 19, n. 44 and 47.

who rely both on the law of nature and on the law of the divine institution for the prohibition of polygamy and divorce, are sometimes given to mixing up the two laws together in such a way that it is at times difficult to be sure whether some statement made by them is meant to apply to the one or to the other, or to both. Sanchez sets a bad example in this respect; Perrone, on the contrary, deals with each of these two laws under completely separate headings. In a paper like this, written for the unorthodox as well as for the orthodox, it is most essential to treat these two laws separately, and it seems convenient to begin with the law of nature.

"The Law of Nature"—What is Meant by it here.—Let us now see, in the first place, what our authors mean when they say that polygamy and divorce are forbidden by the law of nature. Writers of all classes and in all times have been given to using the phrase "law of nature" in the most reckless fashion, and the theologians and canonists are often flagrant sinners in this respect.[1] Even in our own time we find them speaking of "the law of nature" when it is clear that they do not mean any law of nature pure and simple, but something containing a considerable infusion of other elements. It is, however, fortunate that our authors, in dealing with the matters now under consideration, formed for themselves a definite conception of a law of nature independent altogether of revelation; and if they had only stuck to that conception throughout, and had kept their law of nature separate from other laws, we should have had nothing to complain of. The particular theory which they set before us is apparently not a very ancient one. There were, of course, vague references made to the law of nature in this connection from the earliest times, but the theory in the form in which we have now to consider it appears to be no older than the thirteenth century. Freisen[2] seems to give to St. Thomas Aquinas the credit of laying down what may be called its main lines. We might be inclined to criticise certain of its details, but in substance it is a theory which seems quite intelligible to us, and which we need feel no hesitation in accepting.

Taking this theory of the law of nature as commonly stated,[3] we find it is said in effect that the laws of nature are of two classes. On the one hand, there are laws of nature which may be called primary or universal laws, which speak for themselves, which need no elaborate process of observation or reasoning for their discovery, and which are of so absolute a nature that

[1] See Freisen, pp. 893–7.

[2] P. 366. St. Thomas Aquinas (*Tertiæ partis Summæ Theologicæ supplementum*, quæstio 65), in dealing with the law of nature in regard to polygamy, gives several references to the "philosophus," but he does not seem to owe much to the particular passages to which he thus refers.

[3] See St. Thomas Aquinas, suppl. quæst. 65; Sanchez, lib. 2, disp. 13; lib 7, disp. 80; lib. 10, disp. 1; Pirhing, lib. 4, tit. 1, n. 127, 129, and 137–8; Benedict XIV. *De Syn. Diœces.*, lib. 13, cap. xx., § 9; Perrone, vol. iii. pp. 23–33 and 115–131.

we cannot conceive even God himself sanctioning any deviation from them. On the other hand, there are laws of nature which our authors speak of as being, as it were, conclusions drawn from those primary laws—in some cases by an elaborate process of deduction,[1] which consequently are not always readily discoverable by primitive people, and which, moreover, not being of an absolute nature, may under some circumstances give way. It is, they tell us, to the latter class—the class of secondary laws of nature, as they are called—that the laws of nature prohibiting polygamy and divorce belong. Another way they have of putting the matter is that polygamy and divorce are not repugnant to the law of nature in such a way as to be under all circumstances unlawful; that they are not bad in themselves, but only on account of the evil consequences they are apt to entail, and that these consequences in some cases may not result from them or may be compensated for.

We get a clearer insight into their meaning when we turn to the arguments by which they support their view. We need not recapitulate those arguments at length. Some of them are of the same far-fetched and fantastical sort that we occasionally find used by our own lawyers in England, at least down to the days of Bacon and Coke. Some of them proceed upon an ignorance of physical laws which in the earlier writers is in no way surprising; others, again, are confirmations drawn from revelation, and are not properly admissible for the purpose of establishing a law of nature pure and simple. It is enough to say that the main arguments used are very much of the sort we ourselves are constantly in the habit of using. They, in fact, amount to this—that polygamy and free divorce are to be condemned because they are proved by experience to be incompatible with the highest ideal of family life, with domestic peace, or with the proper care and education of children, or because they tend to the degradation of women.[2] But, weighty as these considerations are, it is admitted they may at times be overborne by considerations still weightier, and that, when they are, polygamy and divorce may be tolerated. The toleration under divine authority of polygamy and divorce among the chosen people of God is the illustration of this on which our authors always dwell, and perhaps the chief merit of the law of nature we are now considering in their eyes is that, while it

[1] Sanchez, in discussing the question whether infidels practising divorce nowadays could be held to be free from sin, says: "Sed sicut tunc excusabat ignorantia; eo quod indissolubilitas matrimonii non procedit ex principiis per se notis, sed ex illis deducitur *per remotas consequentias*; ita et nunc excusare potest" (lib. 10, disp. 1, n 10).

[2] One might have expected to find these writers insisting strongly on the evils of polygamy and divorce as tending, if freely indulged in, to stimulate the appetite which of all others is the most difficult to control, but so far as I have seen they do not make much of this argument.

It is, perhaps, well to mention here that most of these authors insist on the distinction between what are called the "primary" and "secondary" ends of marriage, but it seemed possible to explain their views in substance without bringing in this additional complication.

furnishes a fairly stringent prohibition of polygamy and divorce, it does not preclude the possibility of such exceptions being allowed.

Law of Nature Spoken of as a Divine Law.—We sometimes find our authors speaking of their law of nature as being, in a certain sense, "a divine law," and seeing that that law may be said to be written on the face of nature in characters which man in due time will learn to read for himself, it is perfectly intelligible that it should be so spoken of by those who believe in an all-wise and benevolent Author of Nature. But this view of the matter in no way affects the position that, if we are to establish a law of nature of the sort with which our authors start—a law of nature pure and simple and independent of revelation—the contents and effect of that law, and the qualifications and limitations to which it is subject, can be learned only by human experience and human reasoning based on that experience.[1]

Distinction between the Consummated and Unconsummated Marriage.—In order to complete this statement of the views of our authors, it should be added that, looking only to the law of nature, there is a difference between the degree of indissolubility attaching to the consummated and that attaching to the unconsummated marriage. There is, Sanchez[2] says, nothing in the law of nature to prevent a marriage while unconsummated being freely dissolved by the mutual consent of the parties.

Our Position with Reference to such Laws of Nature.—Now a law of nature of this sort is a thing with which we feel ourselves perfectly at home. We have, as society has advanced, discovered many other similar laws of a moral, social, or economical kind, we are working out others, and there are others, again, in regard to which we are still in the dark. When the legislator arrives at a clear perception of such a law, it becomes his duty to do all that is reasonably possible to bring his legislation into accord with it; but there are cases in which any attempt to hurry matters would, owing to the ignorance and "hardness of heart" of the people, do infinitely more harm than good; and in these he must be content to trust to time, to a steady pressure, and to the natural growth of the society he has to deal with. This might be so with the native ruler of an Oriental State who was in advance of his own people; but it is best illustrated by our own position in British India and in some of our colonies and protectorates where we have to do with large masses of people whose personal laws admit of polygamy and divorce. It would be

[1] Unter jus naturæ versteht man jene Principien die sich ergeben aus dem natürlichen Begriff eines Dinges, abgesehen von den Bestimmungen der Religion; unter jus divinum diejenigen Principien, welche in der Offenbarung (hl. Schrift und Traditio Divina) ihren Grund haben" (Freisen, p. xxvi.; see also p. 905).

[2] Speaking of the degree of indissolubility attaching to the *matrimonium ratum*, he observes: "Sed hæc firmitas non omnino provenit ex sua natura nude sumpta, sed a sua natura juncta divinæ institutioni; nam, attenta ejus contractus natura ante consummationem, non apparet cur non possint contrahentes mutuo consensu separari" (lib. 2, disp. 13, n. 10).

absolutely impracticable in those places to reform the laws of such people *per saltum*; and to adopt any course like that followed in England[1] of simply declining to provide, in the case of their marriages, the special sort of relief administered by a Matrimonial Court might give rise to the most appalling results. We are thus, for the time being, and it may be for an indefinite time to come, compelled to recognise, and give effect to, legal relations which run counter to the general principles of "the law of nature." The action of a legislator under such circumstances may at times be open to criticism; and, even apart from this, where a question of giving effect in some particular way to his law arises before some external authority, that authority may, for reasons of its own, decline to give effect to it. This may happen even as between different jurisdictions within the limits of the same State. Thus the peculiar sort of relief administered by a Matrimonial Court would not be given in England in the case of a British Indian polygamous marriage. But no reasonable human being would think of suggesting that a positive law should be held by any authority on earth to be *ultra vires* or void because it was not in sufficient conformity with a "law of nature" of the class here referred to.

The theory of the law of nature described above would seem, if there were nothing more to be said, to recognise all this; but, as already intimated, there is something more to be said. The writers whose works we have been considering commonly express themselves as if they held that, even if their law of nature stood alone, polygamy or divorce could never be lawful except under some sanction from the Author of Nature, granted either by a direct revelation or, as some would add in the case of divorce, through the medium of a power delegated by Him to His Church. It is difficult, having regard to the descriptions they themselves give of their law of nature, to believe that they really mean that. One is inclined to suspect that what has happened is simply this: that, working as they do in an atmosphere highly charged with theological elements, though they may succeed in isolating their law of nature at starting, they are unable to keep it for any time from absorbing some of those elements, and that it is with reference to some new compound thus formed, and not with reference to their law of nature pure and simple, that they insist on the necessity of the divine sanction. But there are passages which it is difficult to explain in this way,[2] and perhaps the most definite is one from the pen of the "Angelical" himself. In one place,[3]

[1] See the number of this journal for August, 1900, pp. 376–9.

[2] Perrone (vol. iii. p. 29) treats the opinion we are now considering as deliberately maintained by some authors in connection with the law of nature against polygamy and expresses his dissent from it.

[3] "Ad tertium dicendum quod lex naturalis in quantum continet præcepta communia, quæ nunquam fallunt, dispensationem recipere non potest. In aliis vero præceptis, quæ sunt quasi conclusiones præceptorum communium, quandoque per hominem dispensatur, puta quod mutuum non reddatur proditori patriæ vel aliquod hujusmodi" (*Summa Prima Secundæ*, qu. 97, Art. 4, quoted from 2 Esmein 327).

referring to the laws of nature generally, he tells us that, though the absolute laws of nature admit of no "dispensation," even man may sometimes exercise a power of "dispensing with" laws of nature of the class with which we are here concerned. But when he proceeds elsewhere [1] to consider the particular case of the law of nature against polygamy, he holds that it is placed beyond the power of man in this respect. Having stated that this law of nature must under certain circumstances give way, he goes on to say that those circumstances are so difficult to determine that the power of deciding whether a deviation from the general rule may be allowed, or, in other words, whether what he calls a "dispensation" may be granted, "is reserved" to Him from whose authority the law derives its operation—namely, to God. What exactly this passage means, and in particular whether St. Thomas is to be understood as inferring for himself from the nature of the case that the power *must be* so reserved, or whether he is merely offering a reason for a reservation which he assumes to be established *aliunde*, we must leave it to those who have studied his works at large to say.

How the Matter really Stands.—But meantime, seeing that the law of nature with which our authors start is a thing that stands completely clear of theological considerations, we need not hesitate to look into it for ourselves, and in doing so it is necessary to attend to two points.

In the first place, if we are to treat this "law of nature"—as our authorities do when they speak of "dispensing" with it and so forth—as if it were a law in the proper sense, we must think of it as a law laying down a general rule prohibiting polygamy and divorce, but subject to exceptions, which it indicates only in general terms.

In the second place we must bear in mind a distinction which some of these authorities have been careful to point out to us, though they occasionally lose sight of it themselves—I mean the distinction between the offices of dispensation and interpretation.[2] The power of dispensing with a law, as understood by these writers when they speak with precision,

[1] "Respondeo dicendum quod sicut ex dictis patet art. præc. ad 7 et 8 pluralitas uxorum esse dicitur contra legem naturæ, non quantum ad prima præcepta ejus, sed quantum ad secunda, quæ quasi conclusiones a primis præceptis derivantur. Sed quia actus humanos variari oportet secundum diversos conditiones personarum et temporum, et aliarum circumstantiarum, ideo conclusiones prædictæ a primis legis naturæ præceptis non procedunt, ut semper efficaciam habentes, sed in majori parte: talis est enim tota materia moralis ut patet per philosophum in lib. I, Ethic., cap. iii. in princ. et cap. vii. ad fin. Et ideo ubi eorum efficacia deficit licite ea prætermitti possunt. Sed quia non est facile determinare hujusmodi varietates, ideo illi, ex cujus auctoritate lex efficaciam habet, reservatur ut licentiam præbeat legem prætermittendi in illis casibus, ad quos legis efficacia non extendere se debet, et talis licentia dispensatio dicitur. Lex autem de unitate uxoris non est humanitus sed divinitus instituta; nec unquam verbo aut litteris tradita, sed cordi impressa sicut et alia quæ ad legem naturæ qualitercumque pertinent. Et ideo in hoc a solo Deo dispensatio fieri potuit," etc. (suppl. quæst. 65, Art. 2).

[2] Suarez, *De Legibus*, lib. i. cap. xx. § 10; Freisen, pp. 891–2.

is a power to interfere with the operation of the law,[1] either by preventing its operation in a given case or class of cases or by undoing something it has already done. It is a power of a legislative nature, and as such it is said to be ordinarily reserved to the author of the law. The power of interpretation, on the other hand, is simply a power to ascertain and determine the meaning of the law, and it is a power that in the ordinary course is exercised by those who have to apply the law.

Now if we attend to these two points, we at once see that what we have to do with here is not a question of dispensing with a law of nature, but simply one of interpreting that law, with a view to determining the limits of the exceptions allowed by it to the general rule it lays down; which exceptions, it must be remembered, are just as much a part of the law as the general rule itself is. No doubt the work of interpretation may sometimes present difficulties of the sort referred to by St. Thomas; but if it were to be held that a difficulty presenting itself in the interpretation of a law of nature of this class could only be solved by a revelation from on high, man's position on earth nowadays would be, to say the least, an embarrassing one.

It may be suggested that the Church has been entrusted with a power to dispose of questions of the sort referred to; but the Church is not everywhere to the fore, and, even if it were, and even if it were everywhere in a position to assert its matrimonial jurisdiction over all persons, it may be asked, would it undertake to exercise that jurisdiction over unconverted infidels,[2] and if it did, would it consider itself at liberty to give effect to their laws relating to polygamy and divorce in cases where the law of nature requires this to be done? Perhaps such questions would be put aside with the remark[3] that the world must be to a great extent topsy-turvy until all mankind are gathered into the true fold, and that, though this is to be regretted, it cannot be helped; but it is really unnecessary to pursue the argument. It is enough to say that to speak of a law of nature pure and simple requiring a divine revelation, whether direct or indirect, to work it out involves a contradiction in terms.

In short, it is manifest that you cannot, by hook or by crook, get out of a law of nature pure and simple, like that described by our authors, a prohibition of polygamy and divorce which will be absolutely binding except

[1] Perhaps some of our authors would take exception to this form of expression. They have a very fine-drawn theory as to the mode in which a dispensation operates in cases of the class here referred to. They like to think of it as leaving the law itself untouched, and operating only on the condition of fact to which the law is to apply (see Sanchez, lib. 2. disp. 14, n. 5; Ballerini, vol. i. pp. 381 *et seq.*; cf. Suarez, *De Legibus*, lib. 2, cap. xv. §§ 26–28). But the matter is of no practical importance; for, whatever theory is adopted, the result of the exercise of the dispensing power is the same. If that power were not exercised, the law would produce a certain result; if it is exercised, the law does not produce that result.

[2] See note on pp. 160–161.

[3] See, *e.g.*, Perrone, vol. ii. p. 459.

in cases covered by a divine sanction. If you want to find a prohibition of that kind, and of that degree of stringency, you must seek for it, not in nature, but in revelation. And this brings us to the consideration of the other primæval law above referred to—namely, the law implied in the divine institution of marriage in Paradise.

The Original Divine Institution of Marriage.—As we approach the doctrine of the original divine institution of marriage, we find ourselves at a higher level and in a theological atmosphere. We are no longer able, as we were in dealing with the law of nature, to consider questions for ourselves on their merits, but must treat them from a purely historical point of view.

The Christian teachers from the earliest times, following up certain indications presented to them in Holy Writ, propounded the view that the higher and purer form of marriage introduced by Christianity was a revival, though with certain differences, of an institution which had been set up in Paradise before the Fall; and which, moreover, had been set up there, not by man on his own account, but by a direct interposition of God Himself. Their view was that expressed in the marriage service of the Church of England, where it is said that "matrimony . . . is an honourable estate instituted of God in the time of man's innocency." Those early teachers frequently referred to this divine institution of marriage for the purpose of supporting their views (whether orthodox or unorthodox) of the true ideal of marriage, and in particular the view that marriage is monogamous and indissoluble. We find them dwelling on the *unus Adam*, on the *una costa* taken from him, and the *una Eva* made from it, on the saying that "a man shall cleave to his wife and they shall be two in one flesh," and on the circumstance that here and in other passages—as, for example, when God Himself said that He would make a help meet for man—the singular number and not the plural is used, and that similarly it is said the husband and wife shall be "two" in one flesh, not three or more. What precisely were the conclusions they drew from all this we must leave it to those to say who have studied their writings at large; but, from the extracts from those writings to be met with in ordinary text-books, it would seem that the early Christian teachers regarded the original divine institution of marriage as something more than a mere recognition of or illustration of a natural law of the sort above referred to, that they in fact held that it was intended to convey an absolute prohibition of polygamy and divorce.

Coming down to later times, we find Peter the Lombard referring to the divine institution of marriage in connection with the question of polygamy, and attributing the utterance referred to above ("a man shall cleave to his wife," etc.) to God Himself, speaking through the mouth of Adam.[1] The letter of Innocent III., set out above (pp. 166–7), it will be seen, insists on the divine institution as being against polygamy.

[1] *Libri Sententiarum*, lib. 4, dist. 33. See also St. Thomas Aquinas, suppl. quæst. 42, Art. 2.

Similarly Boniface VIII. (A.D. 1298) declares[1] that the bond of marriage acquired its indissolubility in Paradise from the divine institution. The Council of Trent formally propounded the same view as regards both points.[2]

Coming down still further to the systematic treatises, we find those who wrote them commonly relying for the prohibitions both of polygamy and divorce on the original divine institution, as well as on the law of nature. Sanchez[3] puts the law of nature in the forefront, and treats the divine institution as if it were in some way subordinate, but still it seems clear enough that he regards the latter as imposing a separate prohibition. Pirhing[4] co-ordinates the two sets of prohibitions as independent of one another in a clearer manner, and Benedict XIV.[5] treats them separately. In our day Kutschker seems to rely in the first place on the prohibitions he finds in the divine institution,[6] though he also quotes[7] with evident approval a good deal of what Sanchez says about the law of nature. Perrone[8] deals with the two sets of prohibitions under completely separate headings of his work.

Whether it Involved a Positive Law against Polygamy and Divorce.—We sometimes come across expressions in the works of these writers to the effect that the prohibitions imposed by the original divine institution were not laws in the proper sense, or not positive laws; but apparently no more is meant by this than that they were not promulgated in express words; and if the divine institution furnishes anything more than a mere recognition or illustration of the law of nature, if it added anything to that law, it is hard to understand what it could have added except what we should term a positive divine law.

Now, assuming that the divine institution added to the law of nature a positive divine law against polygamy and divorce, the question suggests itself, as in the case of the law of the Gospel referred to above (p. 173),

[1] "Nos igitur attendentes quod voti sollemnitas ex sola constitutione ecclesiæ est inventa, matrimonii vero vinculum ab ipso ecclesiæ capite, rerum omnium conditore, ipsum in Paradiso et in statu innocentiæ instituente, unionem et indissolubilitatem acceperit," etc. (*Sext.*, lib. 3, tit. 15).

[2] Sess. xxiv. (quoted from Esmein, vol. i. p. 72): "Matrimonii perpetuum indissolubilemque nexum primus humani generis parens divini Spiritus instructu pronunciavit cum dixit: Hoc nunc os ex ossibus meis, et caro de carne mea: quamobrem relinquet homo patrem suum et matrem, et adhærebit uxori suæ et erunt duo in carne una. Hoc autem vinculo duos tantummodo copulari et conjungi Christus Dominus apertius docuit, quum postrema illa verba, tanquam a Deo prolata, referens dixit. Itaque jam non sunt duo sed una caro, statimque ejusdem nexus firmitatem ab Adamo tanto ante pronunciatam his verbis confirmavit. Quod ergo Deus conjunxit homo non separet."

[3] Lib. 2, disp. 13; lib. 7, disp. 80; lib. 10, disp. 1.

[4] Lib. 4, tit. 1, n. 127–129, 137–138. See also *Synopsis Pirhingiana* (1849), lib. 4, tit. 1, s. 5, § 3.

[5] *De Syn. Diœces.*, lib. 13, cap. xxi. §§ 8 and 9.

[6] Vol. i. pp. 11–17. [7] Vol. i. pp. 195–206. [8] Vol. iii. pp. 23–50 and pp. 115–150.

whether a positive law of this kind could be held to apply to infidels, who had never heard of it, and had never even had the means of hearing of it; but the answer here is the same as in that case—namely, that this depends ultimately on the intention of the Law-giver, and that it is for theologians to decide what that intention was.

Lastly, as to whether a divine dispensation would be needed to relieve from the prohibitions imposed by the divine institution and to make polygamy or divorce lawful to man, it will be remembered that, as shown above, the idea of such a dispensation being needed, so far as the law of nature is concerned, is absurd; but it is altogether different here. If, as theologians seem commonly to hold, the monogamous and indissoluble marriage was set up by God in Paradise as a model which man was absolutely bound to follow, it is obvious that nothing short of a divine sanction would justify man in deviating from that model; and the more one considers the matter, the more one is inclined to think that, if we had an opportunity of putting the point directly to our authors, we should find that it is not for the purpose of getting over the law of nature, but for the purpose of getting over the positive divine law which they deduce from the original divine institution, that they hold a divine dispensation to be necessary.

But however this may be, it is clear—to come back to the point from which we started—that the commonly received view is that, from the first appearance of man on earth, there has been in force some law—whether the law of nature or the law implied in the original divine institution, or some combination of both—prohibiting polygamy and divorce to all men, including infidels, and that this law can be got over only by a divine dispensation. Let us now see what divine dispensations are held to have been granted.

To begin with, it is commonly held that such dispensations were granted under the old law in regard both to polygamy and divorce. There seems to have been some difficulty in making out in what manner exactly the dispensation in regard to polygamy was granted, and the theory has been[1] that it was granted by an internal inspiration made to the patriarchs and extended by their example to the rest of the chosen people. We find a fine question raised as to whether these dispensations, however granted, made polygamy and divorce actually lawful, or only in some degree excusable—whether by virtue of them polygamy or divorce would become only *minus malum* or whether it would be put on the footing of a *minus bonum* and so on. The view of Sanchez[2]—and it seems to be the logical view—was that the dispensations afforded a complete justification. A question of more interest for us is whether these dispensations

[1] St. Thomas Aquinas, suppl. quæst. 65, Art. 2; Sanchez, lib. 7, disp. 80, n. 12; Pirhing, lib. 4, tit. 19, n. 43.

[2] Lib. 7, disp. 80, n. 12; lib. 10, disp. 1, n. 7. See also Pirhing, lib. 4, tit. 19, n. 49.

extended to the Gentiles. The inclination seems to be in favour of the view that they did not,[1] and a special reason for this is given in the case of the dispensation in regard to polygamy—namely, that it was granted only with a view to the more rapid multiplication of the chosen people. But this question is of no practical importance since the promulgation of the Gospel, because it is held[2] that, even if these dispensations extended to the Gentiles, they were abrogated, for them as well as for the Jews, by the law of the Gospel, and thus the primæval laws must have resumed their full sway. It may be asked how a writer like Sanchez, who distinctly lays down that the law of the Gospel relating to matters like polygamy and divorce has no application to infidels, can at the same time hold that it would, as against them, have abrogated the dispensations referred to; but here again the question is one as to the intention of the divine Law-giver, which it would be beyond our province to discuss.

The only direct dispensation held applicable in the case of infidel marriages at the present day is that contained in the Pauline privilege, to be hereafter discussed; but it is conceivable that the Church may have a dispensing power entrusted to it by God. As to this, it is held that the Church has been given no such power in regard to polygamy;[3] but, it is contended by some that the Church has been given power to dissolve an infidel marriage on the conversion of one or both parties to it, though it may have been consummated while the parties were still unconverted. As regards the unconsummated infidel marriage, the Pope is held[4] to have the same power of dissolving it, on the conversion of one or both the parties, as he exercises in the case of an unconsummated Christian marriage; and I have heard that this power has been sometimes exercised on the conversion of one of the parties to an unconsummated infant-marriage in India; but whether the Pope, when he dissolves an unconsummated marriage, is to be regarded as dispensing with a divine law by virtue of a power entrusted to him by God in that behalf, or whether he is to be regarded as dispensing only with a law of the Church, is a question which has given rise to much discussion.[5]

Peculiar View of Perrone regarding these Laws.—So much for what appears to be the ordinary theory as to the effect of the primæval laws. We have now to notice the opinion of Perrone[6] who, as already stated,

[1] Sanchez, lib. 7, disp. 80, n. 13; lib 10, disp. 1, n. 8.

[2] Sanchez, lib. 7, disp. 80, n. 14; lib. 10, disp. 1, n. 9; Pirhing, lib. 4, tit. 1, n. 130; tit. 19, n. 49.

[3] Sanchez, lib. 7, disp. 80, n. 9; Pirhing, lib. 4, tit. 1, n. 130.

[4] Feije, § 601.

[5] Freisen maintained the latter view in the work to which we have already several times referred; but he has retracted it in the preface to his second edition as unorthodox. See in particular pp. xxvi.–xxvii.

[6] Vol. iii. pp. 23–50.

dissents from that theory so far as polygamy is concerned; and it is of some importance to refer to this because the mere fact of his so dissenting throws much light on the question of the authority to be ascribed to such theories. Perrone is, above all others, exercised about the reputation of the patriarchs. He takes up the cudgels for them against Calvin, and he tells us that it is in order the more effectually to defend them that he enters upon the discussion of this question. He is not satisfied that the patriarchs can be cleared by the current theory, so far as polygamy is concerned, and, in particular, he does not relish the suggestion of an internal inspiration conveyed to them and authorising them to practise polygamy. He can, indeed, find no evidence of any divine dispensation at all in their favour on this point; and, as a necessary consequence, their case is gone unless it can be shown that the primæval laws we have been considering are of such a nature and so qualified that no such dispensation would be essential to justify a person, bound only by them, in having more than one wife at the same time. This is what Perrone undertakes to show. He deals with the point very briefly in the case of the law of nature; but when he comes to speak of the law implied in the original divine institution, he treats it in considerable detail. His view of what passed before the Fall is that it must be taken as prohibiting polygamy only when it is aggravated in certain ways, or, to put it otherwise, as tolerating polygamy subject to certain conditions, which conditions he seems to consider were all observed by the patriarchs.

The conditions he mentions are—

(i) That polygamy shall not have been prohibited by any special law binding the parties;

(ii) That it shall not be resorted to with a view to sensual gratification, but only with a view to the begetting of children; and

(iii) That the existing wife, expressly or by implication, consents to her husband taking another.

The first of these limitations is one that almost goes without saying; and the second seems to concern only the forum of conscience. Whether the third is of importance from our point of view depends on what exactly it means. Perrone explains his view to be that, so far as the law of nature and the primæval divine law are concerned, it is open to a wife to waive her claim to the exclusive possession of her husband, and to consent to his taking other wives; but would he hold that when a marriage has been contracted between a man and a woman, members of a polygamous community, the woman, by simply abstaining from stipulating that she should be the only wife, has tacitly assented once for all to her husband taking others? Or would he, on the contrary, hold that whenever a member of such a community, having already one or more wives married to him without any special stipulation, proposed to take another,

each of his existing wives would have a power of veto? Again, suppose a man to marry a fresh wife without observing this third condition, would the result in the eyes of the theologian be merely that he would sin, or would the marriage be void?

Perrone is not clear about all this, and it is accordingly impossible to be sure what the practical effect of his theory regarding the lawfulness of polygamy would be. As already intimated, he does not extend his argument to the matter of divorce. In regard to that he holds that the conduct of the patriarchs was covered by a divine dispensation, and, if he is right in this, it is obvious that, so far as their reputation is concerned, it matters not how high a degree of stringency is ascribed to the primæval laws. Perrone is thus free to support the current theory here, and he does support it, holding that the primæval divine law, and apparently the law of nature too, forbids divorce, unless it is sanctioned by a divine dispensation.

All this—and in particular the broad distinction he considers to exist between the prohibitions of divorce and those of polygamy in the primæval laws—may seem open to criticism, but his arguments turn to so large an extent on theological considerations that it would be beyond our province to discuss them. It is enough for us to note the fact that he differs to the extent he does from other high authorities and that he insists that he does not stand alone in this matter. He himself speaks of his views as being merely academic, and having no practical bearing since the promulgation of the law of the Gospel, which, as before said, he holds to apply to unconverted infidels; but the mere circumstance that a man, occupying the position Perrone held, could, in a work dedicated to the Pope, throw over the current theory in the way he did is of considerable practical importance. It goes to suggest that the rival theories put forward to support the Pope's action in regard to such matters are regarded very much in the same light as we regard certain theories which have, especially in times past, been put forward to account for the existence of portions of our own positive law, and which, like Coke's theory of the double possibility, and Blackstone's theory of a supposed descent from an undiscoverable purchaser, are liable to be abandoned upon further research or further consideration.

Views of the Protestant Churches regarding the Polygamous Marriage.—Having thus got an idea of the views regarding polygamy and divorce among infidels held by the authorities of the Catholic Church, we may now turn to the other churches, and here I propose to consider only the discussions which have taken place within the last sixty or seventy years, and which came to a head in the Lambeth Conference of 1888. Discussions bearing directly or indirectly on these matters are no doubt to be found in the works of Protestant authorities of an earlier period; but, in looking into questions of this sort from the practical point of view, it is natural to work backwards, and in the recent discussions which I have come across I

find no references worth speaking of to any such older authorities. When the persons who took part in these discussions refer to earlier authorities, it is almost invariably to authorities of a far more distant period—to the Bible itself or to the writings of the Fathers. As already stated, Archdeacon Watkins's *Holy Matrimony* seems to be the only systematic work on the law of marriage written by an Anglican divine in our time, and I shall have to refer to it later on; but it is more convenient to begin with the discussions that took place before it was published among Protestant missionaries of various denominations employed in different parts of the world, and those responsible for, or interested in, their work. These discussions do not touch the question dealt with above, as to the way in which a divorce between infidel parties, effected before their conversion, should be treated by the Church on the conversion of one or both of those parties. They are confined to the matter of polygamy—that is to say, to the question as to how a polygamous marriage should be dealt with by the Church on the conversion of one or more of the parties to it. They admit of being more briefly treated than the discussions among the Catholic authorities; but it was only to be expected, having regard to the greater freedom of opinion allowed, and the greater diversities of practice prevailing, in the Protestant churches, that they would extend over a wider range, and it may conduce to a clearer understanding of them to start by stating, in their logical order, the various points to which they gave rise.

Analysis of the Problem.—(1) To begin with, there is the question whether the particular polygamous union which presents itself for consideration is in any sense a marriage; for, if it cannot from any point of view be deemed to be a marriage, but must be treated as a mere union of concubinage or fornication, the theologian need not, any more than the lawyer or anybody else, trouble himself about it.

(2) Supposing the union must from some points of view—as, *e.g.*, from that of the lawyer—be deemed to be a marriage, it may be suggested that, as held by the Catholic teachers, polygamy is prohibited even to unconverted infidels, either by some higher law applying to all mankind from the beginning of the world, or by the law of the Gospel, and that consequently every theologian must hold either

(*a*) That the polygamist's marriages with all his wives are void *ab initio*; or else, as the Catholic teachers do,

(*b*) That the polygamist's marriage with his first wife is valid, but that all further marriages contracted by him during the continuance of that marriage are void *ab initio*.

If this is found to be so, there is, of course, an end to the discussion, for it is obvious that the Church cannot uphold what is no better than concubinage.

(3) But suppose, on the contrary, that there is no such law against polygamy binding the unconverted infidel, then what presents itself for

consideration, on the conversion of one or more of the parties to the polygamous marriage, is of the nature of a conflict of laws. All the polygamist's marriages must be deemed, even by the theologian, to be valid and binding marriages up to the time of the conversion, but all of them, or all but one, are marriages which could not be contracted between Christians; and, that being so, the question arises whether the Church ought, on the conversion of any of the parties, to recognise them as still binding on those parties, or ought it to refuse to do so. Supposing the question to be reduced to this, it may be contended that the answer which the Church must give to it is settled, one way or the other, either

(*a*) By the law of the Gospel, or

(*b*) By some practice established from early Christian times, and which the Church is bound to respect.

If such a contention were made good, there would be nothing more to be said.

(4) Suppose, however, that this contention fails, and the Church is thus free to decide for itself whether it ought or ought not to recognise all the marriages as still valid and binding, then the issue to be decided ceases to be a purely theological one, and has to be dealt with mainly on what we may, for shortness' sake, call "common-sense grounds"—that is to say, by looking at the matter from the point of view which I have spoken of above (p. 163) as that of the unlearned man—by weighing against each other the various considerations, whether of justice, decency, or expediency, which may be urged for and against the recognition of the marriage, and striking the balance between them.

General View of the Discussions.—Now if, bearing the above points in mind, we glance through the discussions before us, we shall find, to begin with, that about the first of these points there is very little to be said. There are here and there references to polygamous unions which probably are not, or certainly are not, marriages; but the position does not seem to have been thought out. It was only at the final meeting at Lambeth that attention was directed to this point. It was then complained that the question as to what constitutes a marriage was being shirked. Later on, those responsible for putting the case before the Conference stated that it had been found impossible to frame a definition of marriage, and there the matter was left. This being the position, all that can be said is that we have here nothing whatever to do with those polygamous unions which cannot from any point of view be regarded as marriages, and that the arguments on both sides, in so far as they refer to such unions, may be discarded as altogether irrelevant for our purpose.

As regards the remaining three points set out above, we shall find that each of them was at some stage started and to some extent argued, but that, as the discussion proceeded, the points numbered (2) and (3) were less insisted on, and that it was practically on the point marked (4) that the

matter was ultimately disposed of—in other words, that after a good deal of learning had been expended on the subject, it was found that revelation and theology had no clear answer to give to the question as to how the polygamous marriage should be treated, and that that question had ultimately to be decided mainly, if not exclusively, on what I have called common-sense grounds.

The earliest opinion on the question which I have to mention is embodied in a resolution carried unanimously at a conference of several missionary bodies held at Calcutta in the year 1834. It ran as follows:—

> If a convert, before becoming a Christian, has married more wives than one, in accordance with the practice of Jewish and primitive Christian churches, he shall be permitted to keep all; but such a person is not eligible to any office in the Church. In no other cases is polygamy to be tolerated among Christians.[1]

The question was then submitted to the Bishop of Calcutta (Bishop Wilson), and he seems to have at first had some difficulty about making up his mind on it; but very shortly after we find him, in a communication addressed to the natives of Southern India, taking a view opposed to that of the Calcutta Conference, and practically identical with that of the Catholic theologians. He said that a man with two wives, if he becomes Christian, must put one—the last whom he espoused—away, and live chastely with the first wife, who is in truth his only one in the eyes of God.[2]

Twenty years or more later the Church Missionary Society, though they had joined in the resolution of 1834, seem to have altered their opinions; for we find their committee on January 12th, 1857, circulating a minute on polygamy,[3] in which they discuss the question in considerable detail, and arrive at conclusions for the most part similar to those arrived at by the Catholic teachers. In two places in that minute there are passing allusions to "natural religion," but the main argument is that the original institution of marriage in Paradise is decisive against polygamy; that polygamy has been unlawful from the beginning of the creation, before the human race was divided into tribes, and hence it must be unlawful for all countries and under all dispensations. It is added—and here the minute diverges from the Catholic view—that even the old law gives no countenance whatever to polygamy. The polygamist's marriage with his first wife is declared to be his only real marriage. His so-called marriage with his second wife is no marriage upon the principles of natural and revealed religion, but an unlawful connection. It is accordingly insisted that the polygamist, on his conversion, is bound to put away all his wives but the first, and he must not be admitted to baptism until he does so.

[1] Quoted from *The Gospel Message*, by R. N. Cust, p. 279.

[2] *Life of Bishop Wilson*, vol. i. pp. 363–6.

[3] I quote from a copy appended to the report of the Punjab Missionary Conference of 1862–3.

Whatever unhappiness or injury may arise from an act of religious duty must be borne as the fruit of an original fault, though that fault may have been committed in ignorance. The main object of this minute, it is said, is to place the question simply on scriptural grounds, but some remarks are added as to the practical inconveniences and dangers of allowing a convert to retain more than one wife after baptism.

The next discussion to be referred to is that which took place at the Punjab Missionary Conference held at Lahore in the winter of 1862–3.[1] The gathering on that occasion was a very remarkable one, for it comprised more laymen than clergymen, and among those laymen most of the highest officials in the Punjab—Sir Donald McLeod, Sir Herbert Edwardes, Sir Douglas Forsyth, Mr. R. N. Cust, and Sir Richard Pollock—all men who had attained distinction in their respective lines, and all brought up in the school of the Lawrences, and earnestly devoted to missionary enterprise. The discussion regarding polygamy was started by an essay read by Sir Herbert Edwardes, in which he adopted the arguments and conclusions of the Church Missionary Society's minute of 1857, adding to them scarcely anything worth speaking of. To the argument urged on the other side—that if you insisted on the polygamist convert putting away all his wives but the first, you would force him to break his solemn contracts with them, and perhaps inflict severe hardships on them—Sir Herbert replied that the polygamists' contracts with their wives were immoral contracts which would not bind any one. He admitted that the wives so put away had a claim on the husband for support, but that was all. It was, no doubt, hard on them, but it was unavoidable. Here, again, we have in substance the Catholic doctrine; but the whole sense of the meeting, laymen and clergymen alike, with the exception of two or three members who spoke doubtfully, was against Sir Herbert's view, and in favour of the view taken by the Calcutta Conference of 1834. The converted polygamist, it was held, should, while he had more than one wife, be ineligible for any office in the Church, but he should not be required to put away any of his wives as a condition precedent to baptism. Polygamy, it was said, had been tolerated by God Himself, and the contract of the polygamist with his wives, however repugnant it might be to the Christian ideal, was not an immoral contract; it was a solemn contract, entailing on the husband obligations of a much higher and more important nature than that of supplying the means of subsistence to his wife; and to insist on a convert beginning his new life by breaking that contract would be both wicked and inexpedient.

The view of the Lahore Conference was that to which the great weight of opinion among the Protestant divines in India ultimately settled down. Among the Anglican bishops who adopted it we find Bishop Cotton, Bishop Milman, and Bishop French (of Lahore), and, though it was still

[1] See the report above referred to.

disputed by some Indian authorities, it came to be known as "the Indian view." Nor was it confined altogether to Indian authorities; Archbishop Whateley and Bishop Colenso are said to have held it.[1] It was, as can be readily understood (see *supra*, p. 164), the view that would not unnaturally find acceptance among those who had become acquainted with polygamy in its less gross form, as it presents itself in India and some other parts of the world. On the other hand, one would be prepared to find that those who had come across polygamy in its grosser forms would be predisposed in favour of the opposite view; and that is just what happened. The polygamy prevailing in some parts of Africa is of a kind so gross that it might amount to an intolerable scandal to allow a converted polygamist to retain all his wives; and there was, strange as it may seem to us, another greater danger to be reckoned with. It appeared that some of the African converts, and even some of their native pastors, were contending that a convert should not only be permitted to retain all the wives he had married before his conversion, but should further be permitted to contract additional polygamous marriages after; and it was feared that under such circumstances the concession of the former point might prove to be the small end of a very formidable wedge. This being so, it was natural that those Christian teachers, whose lines lay in such places, should insist on the view that a polygamist on conversion should be required to put away all his wives but one; and this view, though it is not confined to African missionaries, has come to be known as "the African view."

By the year 1886 the controversy thus started had begun to come to a head; it was proposed by those belonging to the Anglican Church that an endeavour should be made to arrive at some sort of authoritative settlement of it, and it was eventually arranged that it should be discussed at the Pan-Anglican Synod which was to meet at Lambeth in 1888. There is a considerable amount of literature on the subject, a bibliography of which is given at pp. 286–8 of Mr. Cust's book already referred to; but I think we may reckon on finding all that is really important for our purpose in the essay written by Mr. Cust himself for submission to the members of the Lambeth Conference (pp. 263 *et seq.* of the same book); in the report of the discussion, which took place in anticipation of the Lambeth Conference, at the Centenary Conference on Protestant Missions (London, 1888); and in the proceedings at the Lambeth Conference itself, to which his Grace the Archbishop of Canterbury has been so good as to allow me (subject to certain very reasonable conditions) to have access. Now on referring to these most recent discussions, the first thing that strikes one is that the theory of a higher law—whether the law of nature or the old divine law or the law of the Gospel—directly applying to unconverted infidels and making polygamy unlawful for them has fallen into the background. There were indeed speakers at the Centenary Conference who

[1] See the essay at p. 263 *et seq.* of Mr. Cust's volume above referred to.

held either that all the polygamist's marriages were void or that all but the first were void; but though some of them referred to the primæval laws, they made no real attempt to consider this matter. By the time the question came before the Lambeth Conference it seems to have become pretty well common ground for all parties that it was impossible for the theologian to insist on treating all polygamous unions as mere nullities, and thus the point numbered (2) in our analysis above was virtually eliminated from the discussion.

Next as to point (3)—the way in which a polygamous union, assuming it to be a marriage, should be treated after the conversion of one or more of the parties to it—it does not seem to have been deliberately argued that there was any scriptural authority having a direct bearing on the question. Appeals of a vague sort to the practice of the primitive Church, like that contained in the Calcutta resolution of 1834, continued to be made on both sides down to the very last, but, as already explained (p. 165, *supra*), nothing whatever could possibly come of them.

At the Centenary Conference there were no formal resolutions passed, but the discussion which took place, though it was of a somewhat desultory nature, may be described as a discussion of the question whether baptism should not be refused to a polygamous convert so long as he continued to have more than one wife. On this question the speakers appear to have been about equally divided. There seems to have been nothing new in the way of argument brought forward on either side. Those, who were against refusing baptism, insisted strongly on the hardship and injustice and scandal of requiring a convert to put away any of his wives, and one of them, a missionary from China, brought forward as an illustration of his argument a case which is worth mentioning here. There was a man, he said, whose wife had proved to be barren, and he accordingly, in order to fulfil the obligation deemed to be incumbent upon him of begetting children, married a second wife, by whom he had children. He then became a convert to Christianity, and the missionary authorities decided that he should put away this second wife, the mother of his children. He was ready to accept this decision, but the wife vehemently protested against being put away. "If this," she exclaimed, "is the system of Christianity, it is not from heaven!" The ultimate result was that the man thought better of the matter, abjured Christianity, and kept his two wives. The moral was obvious.

Now arguments of this kind, against the proposal to refuse baptism to a converted polygamist until he is somehow or other reduced to the position of having only one wife, proceed upon the assumption that if that proposal were to be adopted, the convert would be bound to resort to every means open to him for getting rid of all his wives but one; and it is pretty clear that the bulk of those who supported that proposal held that he would be so bound. But, having regard to the subsequent history of this controversy,

it is important to observe that it is logically possible to hold that, while the Church ought to refuse baptism to the polygamist so long as he has more than one wife, the obligation of the polygamist to his wives takes precedence of his obligation to receive baptism, and that he is accordingly bound to continue to live with all his wives and forego baptism until (if ever) by their death, or by some other event independent of his will, he is reduced to the position of having only one wife. This view of the matter was maintained by at least one speaker at the Centenary Conference—Mr. R. N. Cust—who in regard to this matter, among others, had, directly or indirectly, a very important share in formulating the rules ultimately adopted at the Lambeth Conference.

Lambeth Conference, 1888.—Close upon the Centenary Conference followed the Conference of the Bishops at Lambeth, which appointed from its members a committee of fifteen—most of them bishops from beyond the seas—to consider and report on this subject. That committee, by a majority of ten to five, favoured the African view of the case, and the most material paragraphs of their report ran as follows:—

Committee's Report.—1. Your committee desire to affirm distinctly that polygamy is inconsistent with the law of Christ respecting marriage.

2. They cannot find that either the law of Christ or the usage of the early Church would permit the baptism of any man living in the practice of polygamy, even though the polygamous alliances should have been contracted before his conversion.

3. They are well aware that the change from polygamy to monogamy must frequently involve great difficulty and even hardship, but they are of opinion that it is not possible to lay down a precise rule to be observed under all circumstances in dealing with this difficulty.

4. Your committee recommend that persons living in polygamy should on their conversion be accepted as candidates for baptism, and kept under Christian instruction until such time as they shall be in a position to accept the law of Christ. They consider it far better that baptism should be withheld from such persons, while, nevertheless, they receive instruction in the truths of the Gospel, than that a measure should be sanctioned which would tend to lower the conception of the Christian law of marriage, and thus inflict an irreparable wound on the morality of the Christian Church in its most vital part.

5. The wives of polygamists may, in the opinion of the Committee, be admitted in some cases to baptism, inasmuch as their position is materially different from that of the polygamist husband. In most countries where polygamy prevails they have no personal freedom to contract or dissolve a matrimonial alliance; and, moreover, they presumably do not violate the Christian precept which enjoins fidelity to one husband. . . .

8. Throughout this report "polygamy" has been taken to mean the union of one man with several wives; but among some tribes the union of one woman with several husbands is a recognised institution. It will be plain that no such union can be recognised by the Church.

One of the minority of the Committee read at the conference what he spoke of as being substantially a minority report, and from what he said

it is to be gathered that the minority accepted the view of the majority as to the course to be taken when it is one of the polygamist's wives that is converted; but that they were unable to agree that a rule should be laid down that, when the polygamist himself is converted, he should in all cases be excluded from baptism while he continues to live with more than one wife. It will be convenient to speak first of this latter point, and to consider the views of the majority of the committee on it as embodied in their report, before noticing further what passed at the meeting of the Conference.

No record of the discussions on which this report was based seems to have been kept, and it is not easy to be sure as to the exact meaning of some expressions used in it, but the views of those who concurred in it may perhaps, without much risk of error, be explained as follows:—

In the first place it seems clear enough that they treated the marriage of the polygamist with each of his wives as in all respects a valid marriage; for, unless it was a valid marriage for her, they could not possibly have sanctioned her being baptised while she continued to cohabit with him; and, if it was a valid marriage for her, it must have been a valid marriage for him also—*matrimonii vinculum claudicare nequit.* The marriage between the polygamist and each of his wives being thus a valid marriage, the first question was how that marriage should be treated by the Church when he came by conversion into the sphere of the Christian law; and it seems clear enough that the committee held that that question was not settled by any authority binding on them. It is true that from the references made by them to the "the law of Christ" and "the Christian precept" it might be argued that they meant to convey that there was some positive divine law, which they did not attempt to specify, but which would forbid the husband after his conversion to live with more than one wife. But it seems clear enough from the rest of their report that they did not mean to throw out any vague hint of that sort. In their second paragraph, where they come closest to the point, they do not venture to say more than that they cannot find that either the law of Christ or the usage of the early Church would permit the baptism of a converted polygamist who continued to live with more than one wife. They seem studiously to avoid saying that there is anything, either in the law of Christ or in the usage of the early Church, *prohibiting* the baptism of such a man; and in their fourth paragraph they go on to deal with the matter distinctly as one unprovided for by any authority binding on them, and which it is for them to deal with according to the best of their own judgment. They recommend that the man should be excluded from baptism because they think that is "*far better*" than that he should be admitted to baptism at the risk of producing certain mischievous results. From this it seems clear that when they speak of the "law of Christ" and "the Christian precept," they are referring simply to the law regulating marriages *contracted between persons who are already Christians*, and that they refer to that law, not with a view to suggesting in a hazy

manner that it provides in any way for the case of the converted polygamist, but merely for the purpose of pointing out that to allow him to live with more than one wife would do violence to the ideas on which it is based, and thus give rise to the mischievous results apprehended. It may be added that, supposing the committee to have held that there was a divine law making it sinful for a converted polygamist to cohabit with two wives whom he had married before his conversion, it is not easy to see how they could at the same time have held that, where it was not he but his two wives that were converted, they might both lawfully continue to cohabit with him; but to this point we shall have to return presently.

The resolution moved at the Conference to give effect to the view of the committee on the case of the converted polygamous husband ran as follows:—

> That it is the opinion of this Conference that persons living in polygamy be not admitted to baptism, but that they be accepted as candidates, and kept under Christian instruction until such a time as they shall be in a position to accept the law of Christ.

It is unnecessary to recapitulate at any length the arguments used in the discussion that followed. They were, for the most part, arguments of the sort already referred to, based on what I have called "common-sense grounds"; but the law of the Gospel was also appealed to by one or more speakers on both sides—not, indeed, as explicitly providing for the particular point under discussion, but as affording ground for arguments or inferences in support of or against the resolution. On the one side it was argued that the Gospel enunciated a definite general rule of purity, which must be held to bind the polygamist when converted and make it sinful for him to retain more than one wife; on the other side it was contended that Christ's prohibition of divorce must be held to apply to the polygamous as well as to the monogamous marriage, and to forbid the converted polygamist to put away any of his wives. There were, further, the usual speculations as to the practice of the early Church, of which, as already more than once observed, nothing could possibly be made on either side.

Lastly, there were some members who thought that, having regard to the widely different conditions prevailing in different portions of the missionary field and to the divergence of opinions among eminent authorities, it would be wiser to abstain from laying down any hard and fast rule; and an amendment was moved to the effect that the question should be left for the decision of local authorities, provincial or diocesan; but this amendment was lost by eighty-five votes to nineteen.

As the discussion was drawing to a close, the highly important point referred to above (pp. 192–3) was started. What, it was asked, was meant by saying that the converted polygamist shall not be admitted to baptism until such time as he shall be in a position to accept the law of Christ?

Was it meant to suggest that he would be bound to resort to all means open to him to put himself in that position, and in particular that he would be bound to divorce all his wives but one? This was a question which, though it might be put aside by the Conference for the moment, would obviously have to be answered by the local missionary authorities if they proceeded to enforce the proposed rule. The convert would look to these authorities as his spiritual guides, and if they told him that they could not baptise him so long as he lived with more than one wife, he would naturally ask them to advise him as to what it was his duty to do in the dilemma in which they thus placed him. For them to refuse under such circumstances to advise him, for them to say to him simply "we have told you what our rule is; for the rest you must judge for yourself," would be the grossest dereliction of duty, and there is no saying to what it might lead.[1] They would be clearly bound to advise him? and what advice ought they to give him? Ought they to tell him that it was his duty to qualify himself for baptism by getting rid of all his wives but one; or ought they to tell him that it was his duty to abide by his marriage contracts and forego baptism for the time being?

What the result might have been if the Conference had proceeded to thrash out this question, it is impossible to say. As a matter of fact it was put aside after a very few minutes' conversation. Some of the members, who were evidently against giving any countenance to the view that the polygamist should be driven to resort to divorce, asked in effect whether, by voting for the resolution, they would be understood to support that view, and the answer was in the negative. The resolution as framed would, it was said, "leave divorce or non-divorce an open question." In other words, the resolution meant that the local missionary authorities should be bound, in every case of the class in question, to refuse baptism, and thus give rise to the dilemma above referred to, but that they should be left to deal with that dilemma according to their own views of what was right under all

[1] Most of my readers have probably heard the old story of the convert to whom baptism was refused because he had two wives, and who, shortly afterwards, came back to the missionary and announced that the obstacle no longer existed, as he and his friends had now killed one of the wives and eaten her. I suppose that story is the mere invention of some facetious person, but it is not without its moral. It draws attention to the danger of pointing out to an uncivilised man an obstacle which stands between him and his object, and saying no more. For the truth of the following I can vouch: A friend of mine a very few years ago was enlisting men for a sort of police force in a wild tract just beyond our border in India. An applicant for service presented himself, and my friend was on the point of engaging him, when some of the tribal leaders objected on the ground that the applicant had some time before caught his wife with another man, and had killed the man, but, contrary to the custom recognised by them in such cases, had spared his wife, that he was in consequence involved in a blood feud with that man's relations, and would accordingly be a very undesirable acquisition to the force. Upon this my friend refused to take him. Two or three days later the applicant reappeared, and, after making his salaam, said, "It is all right now, sahib. I killed my wife last night."

the circumstances of the position. Upon this understanding being arrived at, the resolution was carried by eighty-three votes to twenty-one.

Case of Conversion of Polygamist's Wives.—To turn now to the case where it is not the polygamist himself who is converted, but one or more of his wives. The resolution moved to give effect to the views of the majority of the committee on this was as follows :—

> That the wives of polygamists may, in the opinion of this Conference, be admitted in some cases to baptism, but that it must be left to the local authorities of the Church to decide under what circumstances they may be baptised.

This resolution was carried by a much smaller majority than the first—namely, by fifty-four votes to thirty-four. This was doubtless to some extent the result of its being attacked on both sides—though of course with different objects—as being logically inconsistent with the first resolution. It was argued that the polygamist's marriage with each of his wives was either valid or it was not. If it was valid, he ought not to be driven to put her away when he was converted ; and if it was not valid, she, on being converted, ought not to be allowed to continue in what must be regarded as no better than a state of concubinage. Again, it was asked, what will the heathen think when they are given to understand that, though the husband is committing sin with his wives, they are not committing sin with him ? But, assuming that the view, which the majority of the Conference took of the position as a whole, was that above attributed to the majority of the committee, they had a perfectly good answer to such objections. They never meant to deny that the polygamist's unions with his wives were as good marriages for him as for them, and they never meant to suggest that any converted person would be sinning by continuing to live in such a union. The question with them was simply how far they could take the risk of giving rise to scandal and bad example in the Church. In the case of the converted husband that risk would be great, as he would be continuing to indulge in an excess utterly repugnant to Christian ideas, and which would be downright criminal in the case of other members of the Christian community. In the case of the converted wife, on the contrary, the risk would be smaller, for she would be indulging in no such excess. The most that could be said would be that she would be making herself a party to her husband's indulgence, and in this she would often have practically little choice. Under these circumstances there would be at least nothing illogical in making a distinction between the cases of the husband and his wife, and reserving a power to admit her to baptism in some cases.[1]

[1] Some of those who have from time to time supported this distinction have expressed themselves as if they thought it could be based on some deeper foundation than that indicated above. The position of the converted wife of the polygamist has been compared to that of an English wife whose husband is an adulterer, and who would not on that account be bound to separate from him. But the cases do not run on all fours. Assuming the polygamist's unions with all his wives to be valid marriages, the

The course taken by the Conference might, indeed, give rise to awkward consequences, as one can easily see by considering the position that would result from it when several of the polygamist's wives were converted, and, again, if later on the polygamist himself was converted, and was required to divorce all of them but one; but that would be something altogether different.

In connection with the matters of polygamy and divorce among infidels, it only remains to speak of the views of Archdeacon Watkins, which, it may be observed, differ in one way or another from all those that we have already considered. The archdeacon puts the law implied in the divine institution of marriage before the Fall in the very forefront of his work, and he gives it a rigidity which is not ascribed to it in the works of Catholic theologians. He treats the model of marriage, described as having been set up in Paradise, not only as one from which no society could take upon itself to deviate, but further, as one from which it would be difficult to conceive God Himself fully sanctioning any deviation. Though he admits that polygamy and divorce were tolerated, and even regulated, by the old law, he prefers to speak of God as merely "standing by" and "winking at" such things, rather than as sanctioning them; and he apparently does not regard the conduct of the patriarchs as beyond reproach. It may be added that, so strongly does he insist on the system held to have been established in Paradise as the model for all time, that he deems it necessary to suggest (p. 43) a special theory to explain the fact that that system would seem to involve, as its necessary consequence, marriages of a class which later on came to be regarded by all having any tincture of civilisation as not only unlawful, but abominable. I mean marriages incestuous, as the saying is, by the law of nature. But though he insists on the doctrine of the primæval institution in this uncompromising way, he does not, as the Catholic divines and some Protestant divines do, press it as against the infidels. He holds that "what God suffered in the way of laxity, in the case of His own chosen people, for the hardness of their hearts, we may fairly conclude would, for the same reason, be suffered *à fortiori* among the outer heathen" (p. 41); and he further holds that the promulgation of the Gospel has not deprived infidels of the liberty thus accorded to them. He seems indeed not to be aware that large bodies of theologians of other schools think differently from him on these matters. He says: "The overwhelming consensus of the

converted wife must recognise the fact that his other wives stand on the same footing as she does, and, by continuing to live with him, she virtually agrees, though possibly in some cases against her inclination, to share him with them, and is a party to, and, if I may use the word without imputing criminality, an "abettor" of polygamy. It might be possible for a missionary to shut his eyes to this as long as only one of the wives was converted; but, if a polygamist had three wives and all three were converted, it would be hardly possible to fix one's attention on each of the three in turn and think of her for the moment as the one real wife, and the others as mere concubines.

Church, as we shall see elsewhere [?], has gone to recognise in the non-Christian world the same liberty as to divorce and to polygamy which the Mosaic code permitted to the Israelites, and not to recognise outside Christianity the existence of the sacramental bond which in the members of the body of Christ makes marriage indissoluble" (p. 326; cf. p. 332). Again, at p. 439, referring to a particular point discussed at length above, he says that "in the case of two persons who were married outside the Christian Church, and afterwards divorced in accordance with the conditions of their marriage, the Church has not commonly maintained that such persons must be held as bound indissolubly by the tie which they have repudiated."

Now in what he says regarding the non-sacramental character of the infidel marriage, the Catholic theologians are in a certain sense with him; but for the rest, as we have already seen, they take the opposite view. Moreover, as regards the matter of polygamy, there are, as we have seen, Protestant theologians holding opinions similar to those of the Catholics.

As regards the important practical question of the treatment of the converted polygamist or his converted wife, the archdeacon, holding, as he does, that an infidel has the same liberty as was conceded to the Jews, maintains, with logical consistency, that all the polygamist's wives have an equal claim to be considered his wives; but he nevertheless accepts, though with a certain hesitation about some points, the decision of the Lambeth Conference, which, he says, "embodies the best wisdom of the Church upon the subject."

Results for the Civil Legislator.—This brings to a close our review of the various doctrines and opinions propounded by the different Christian authorities on the subjects of polygamy and divorce among infidels. It now only remains to consider what the results of it are for the purposes of the civil legislator, including the civil judge in so far as he discharges quasi-legislative functions; and I fear it must be admitted that those results, instead of being helpful, are somewhat embarrassing.

Let us take the matter of polygamy which has formed the subject of the most recent discussions, and call to mind the ways in which, as shown in my previous article, we ourselves at present treat it [1] within his Majesty's dominions, and in places beyond those dominions where we exercise extra-territorial jurisdiction.

—— **Case of Foreign Marriage.**—First as to the case where a foreign

[1] It will have been observed that the theological authorities reviewed above deal with polygamy and divorce only with reference to the personal relations of the parties to a marriage—those relations with which it is the primary object of a Court like our English Matrimonial Court to deal; and the following remarks must be understood as confined to that branch of the subject. I may return hereafter to the consideration of other legal relations, rights, and duties springing from the marriage, as, *e.g.*, proprietary or pecuniary rights, legitimacy of children, and so on.

polygamous marriage comes before our Courts for consideration—the case which, as already observed, is most closely analogous to that dealt with by the Christian teachers. As we have seen, the principle from which we start is that we must recognise the fact that the marriages of a polygamist, including even his marriage with his first wife—the "potentially polygamous marriage," as we call it—are things differing in certain points of substance from the Christian marriage, and that if we are to deal with such marriages at all, we must, in the main, take them as we find them established by the law under which they have been contracted, and must not, in order to bring them into conformity with our own notions, turn them into something of a substantially different kind. The first result of this principle is that a Court like our Matrimonial Court in England, which is a special piece of machinery, adapted only for handling the Christian marriage, finds itself unable to deal in any way with even the potentially polygamous marriage. Hence, if matrimonial jurisdiction is to be exercised in respect of a polygamous marriage, some separate arrangement has to be made for that purpose. Now we are obviously not called upon to make any such arrangement in a country like England, where scarcely one polygamous marriage presents itself for consideration in twenty years, and where any attempt to enforce the personal obligations created by such a marriage between the parties to it would be in an extreme degree repugnant to the sentiments of the entire community; but in some other places where we have to deal with large masses of immigrants from polygamous countries, we feel ourselves bound, in spite of any repugnance we may feel, to empower some Court or other to exercise matrimonial jurisdiction in respect of their marriages, and the Courts so empowered commonly follow the principle above referred to—that is to say, they take the polygamous marriage as they find it and recognise the union of the polygamist with each of his wives as a valid marriage.

—— **Case of Marriage Contracted within British Sphere of Control.**—But, secondly, we do not stop there. In some places—as, *e.g.*, in British India—we do not confine ourselves to recognising and enforcing the obligations of a foreign polygamous marriage. Finding polygamy established by the personal laws of certain communities settled within the sphere of our legislative control, and seeing that it would be utterly impracticable to abolish it at once, we allow it to continue, we permit polygamous marriages to be contracted, and in certain ways enforce the personal obligations created by them between the parties to them.

—— **Case of Religious Conversion.**—Lastly, where we have to do with a polygamous marriage, we do not, so far as I am aware, allow the mere fact of the religious conversion of one or both of the parties to it to alter the legal relation between them, unless their personal law requires us to do so.

How Far Jurists are in Conflict with the Theologians.—Now in all this

we do not consider that we are violating any higher law; but it is unfortunately the fact that in every particular of it we are running counter to the views of one section or other of the Christian authorities above referred to. Indeed, there is only one section of those authorities that we seem to have with us throughout, and that is the section of the Protestant authorities represented by Mr. Cust and certain members of the Lambeth Conference, who hold, not merely that the polygamist's marriage with each of his wives is an equally binding marriage, but, further, that the obligations arising from it are not affected by the conversion of either party. We might at any time find ourselves in actual collision with that other section of the Protestant authorities who, though they hold the marriage of the polygamist with each of his wives to be binding so long as the parties continue unconverted, insist that, in order to prevent scandal or bad example in the Church, a converted polygamist is always bound to get rid of all his wives but one, and the converted wife of a polygamist is in some cases bound to leave her husband. We might at any time find ourselves compelled, in opposition to this view, to enforce the obligations of the marriage against the converted party; for we could hardly make the mere risk of scandal or bad example in the Church a ground for granting a divorce, or even a judicial separation. Seeing, however, that the converted polygamist would very commonly have it in his power under his personal law to get rid of his wife, and thus set himself right with his spiritual advisers without any assistance from us, the danger of any such conflict arising may be said to be remote.

It is with the Catholic teachers, and with the Protestant teachers who agree with them in holding that by the law of nature pure and simple, or by some positive law of God, or by both, the polygamist's marriage with his first wife is his only real marriage—it is with the divines who hold this view that we find ourselves most seriously in conflict. If we wanted to bring ourselves into line with them, we should, when a polygamist's marriage with his first wife contracted under some foreign law presented itself for consideration, have to treat it everywhere, even in the English Matrimonial Court (thus reversing the decision in the *Hyde* case), as a monogamous marriage, precluding him from contracting any other marriage during its continuance; in other words, we should have, as observed by Lord Penzance, to set about creating conjugal relations instead of enforcing them. Further, when a subsequent marriage of the polygamist, contracted during the continuance of the first, presented itself for consideration, we should have to treat him as a bigamist and his second wife as a mere concubine. Lastly, we should have, regardless of consequences, to abolish polygamy at once among all communities falling within the sphere of our legislative control.

Hopelessness of any Accord.—But these are things which would be either contrary to the ordinary principles of justice, as understood by us, or altogether beyond the range of practical politics, or both—things, accordingly, which we could not think of doing unless it were shown beyond all possibility

of doubt that we were bound to do them by some law of so high a nature that it would override all ordinary rules of human conduct. Now, we have already fully considered the higher laws relied on by the theologians in this connection—the law of nature pure and simple and the positive laws of God. As regards the law of nature, on which we may claim to have an opinion of our own, we found that it was absurd to suggest that it had the effect attributed to it. As regards the laws of God, the position is different. The question involved here is a purely theological one, upon the merits of which it would be beyond the province of this article to enter; but it is necessary to note how the civil legislator stands with reference to it. It has been said by some celebrated person with a turn for epigram that the civil legislator should be an atheist, and, though we may not go as far as that, it is safe to say that the civil legislator cannot nowadays be expected to be a profound theologian.[1] Let us take the case of a civil legislature, which may be said to recognise, not only the existence of a God, but also of a revealed law of God, and which would not infringe any rule of that law, the existence of which could be made clear to it. Will any one venture to suggest, after considering the abstruse nature of the discussions above referred to, and the differences of opinion among theologians, and even among Catholic theologians, disclosed by them, that any such legislature should take upon itself to decide whether there is or is not a positive law of God absolutely forbidding polygamy to the unconverted infidel? Further, suppose such a legislature took upon itself to decide that question, what hope would there be that the theologians, against whose view its decision went, would accept that decision?

The Question of Divorce.—If we turn to the matter of divorce among unconverted infidels, we find the position to be similar, except that here the Catholic theologians seem to be pretty well agreed among themselves. But it is unnecessary to go over the ground in regard to this matter in the same detail.

Conclusion: The Civil Legislator must Hold to his Present Course.—It is enough to say that, as regards both polygamy and divorce among unconverted infidels, the civil legislator would be compelled, from sheer helplessness, to abandon all attempts to determine whether there is or is not any positive divine law governing the position. He would naturally be anxious to avoid, as far as he could consistently with his duty, coming into conflict with the views of any section of theologians, and he would of course recognise the right of every Christian community to fix the conditions on which it would admit converts to its membership; but for

[1] There was, no doubt, a time when our own Parliament was ready enough to declare what was or was not "Goddis law" on some knotty point; and, though the time for that has passed, we occasionally find individual members of both Houses undertaking to discuss theological questions on their merits. It can, however, scarcely be said that their arguments have any real influence on the decision of the practical question at issue.

the rest he would have to go on as at present, doing what seems to him right, according to the best of his own lights.

Probability that Theologians would Recognise his Difficulties.—And I suspect that even the Catholic theologians would not blame him much for doing so. They are, not unnaturally, up in arms when, as in regard to the matters of civil marriage or divorce among Christians, the civil legislator takes upon himself to alter existing laws which they regard as sacred; but it would be different where, as in this case, he is merely allowing the ancient laws of an infidel community to stand, and giving effect to them, because, having regard to considerations of natural justice, of public order, and of the ultimate interests of civilisation, he finds it necessary to do so. One of the most important battles which the Church has ever had to fight in the interests of morality and civilisation was that against the Roman system of free divorce; but theologians seem to recognise that it was impossible for the Christian emperors to abolish a system of that sort *per saltum*, even among their Christian subjects. Thus Sanchez (lib. 10, disp. 1, n. 12), though he begins by saying, "Vix posse imperatores Christianos a culpa excusari qui repudium concesserunt," goes on to admit that there were certain excuses for them, and the first excuse he refers to is so much in point here that the passage relating to it may well be quoted. It runs as follows:—

> Prior [excusatio] est eos minime approbasse nec permisisse tanquam licita repudia, sed tanquam minus mala, quo graviora mala præcaverentur. Sicut DD. n. 5 allegati aiunt Moysem ea Hebræis permisisse. Quamvis enim princeps teneatur pravas consuetudines abolere, et reus sit culpæ id omittens dum commode efficeri potest—at secus est ubi absque majori damno communis boni id fieri nequit. Unde recte D. Chrys. hom. 32 super C. 19 math. inquit "Permittimus quod nolentes indulgemus quia pravem hominum voluntatem ad plenum prohibere non possumus. Permittitur ergo fieri mala ne fiant pejora."

THE HISTORY OF THE LAW OF NATURE: A PRELIMINARY STUDY.

(Second Article.)

[*Contributed by* Sir Frederick Pollock, Bart.]

Grotius.—We have seen in the former part of this study[1] that in the course of the seventeenth century the classical tradition of the Law of Nature was broken up after the Reformation controversies, with the result that in this country it has been forgotten or misunderstood ever since. Oblivion went so far that it was possible for Bentham and his followers to suppose quite honestly that the Law of Nature meant nothing but individual fancy. But at the same time that the Law of Nature ceased to be honoured among us in speculation, it was entering on new spheres of practical power. The modern law of nations was founded by Grotius on a revised scheme of natural law, and his foundations have always and everywhere been treated as sound except by one insular and unhistorical school. Grotius's doctrine was expanded and made the common property of public men by his successors; it was accepted in this current form by the English publicists of the eighteenth century, and thus had considerable influence on English and still more on Scottish expositions not only of the law of nations but of public law in general. In the domain of private law the ideas of reasonableness and natural justice, which do not the less belong to the Law of Nature because they have been called by different names at different times, leapt into fresh activity, and created or largely modified whole bodies of doctrine. Later, by a process which at first sight looks paradoxical, the same ideas became the vehicle for spreading the distinctive principles and methods of the Common Law in lands where it did not and could not formally claim any jurisdiction. We shall now try to follow the Law of Nature in these several careers of conquest, of which some at least are far from being closed.

International Law.—With regard to International Law, it is notorious that all authorities down to the end of the eighteenth century, and almost all outside England to this day, have treated it as a body of doctrine derived from and justified by the Law of Nature. There has been a certain

[1] *Journ. Soc. Comp. Leg.*, 1900, p. 418.

divergence of opinions on the question whether the law is established by the reason of the thing alone—*natura rationalis*, as Grotius says—or by the actual usage of civilised nations. But this divergence is really more in expression than in any fundamental conception. It was never asserted by the most zealous advocate of the Law of Nature that an individual opinion of what is just can, as such, make a general rule. Here, as elsewhere, we must apply the principle of Aristotle, and deem that to be reasonable which appears so to competent persons. There must be a competent and prevalent consent, and the best evidence of such consent is constant and deliberate usage. Discordant opinions as to what is right or convenient could never produce a uniform accepted usage, as, on the other hand, no other reason can be assigned for the general acceptance of certain usages by independent States than that they are generally believed to be convenient and just. In fact, the elements of reason and custom have been recognised by the highest authorities as inseparable, and strengthening one another. Thus the English law officers (among whom Lord Mansfield, then Solicitor-General, took the leading part) wrote in their celebrated opinion in the case of the Silesian Loan that the law of nations is "founded upon justice, equity, convenience, and the reason of the thing, and confirmed by long usage."[1] In the very infancy of the doctrine Alberico Gentili, while he declared that the *ius gentium* applicable to the problems of war was identical with the Law of Nature, and claimed for it the authority of absolute reason, also vouched the continuing and general consent of mankind to witness it; not an imaginary consent of all men living at any one time, but an agreement constant and prevalent—in fact, *quod successive placere omnibus visum est*. For all practical purposes we may define International Law, with the late Lord Russell of Killowen, as "the sum of the rules or usages which civilised States have agreed shall be binding upon them in their dealings with one another," remembering, however, that the agreement need not be formal or express. Such rules may, of course, be modified, generally or partially, by convention or usage,[2] in any manner consistent with the objects for which the law of nations exists.[3] This is not only required by convenience, but wholly in accordance with the doctrine of the Law of Nature as received in the Middle Ages, which expressly admitted the validity of positive rules and conventions not contrary to fundamental principle. If any one ever

[1] This opinion is commonly referred to in the French version given in Martens' collection. The English may be seen in Holliday's *Life of William Earl of Mansfield*, London, 1797, pp. 428 *et seq.*

[2] See per Lord Stowell, *The Santa Cruz*, 1 Rob. Adm., at p. 58; *The Flad Oyen*, *ibid.*, at p. 139; *The Henrick and Maria*, 4 Rob., at p. 54.

[3] All moralists allow that in some cases it is better, or less bad, to break an agreement that ought never to have been made than to perform it. The exception must apply to nations as well as individuals, though *pactum serva* is the rule, and it is not good to dwell on exceptions. A treaty for the partition of an unoffending neighbouring State, for example, is only a conspiracy aggravating the crime.

did want to lay down a dogmatic and immutable code of *Naturrecht*, it was not the schoolmen, but the utilitarians.

Some English writers, and even one or two eminent judges, have rather superfluously protested that the opinions of text-writers cannot make law for nations.[1] It is certain, as Lord Stowell pointed out, that they cannot; but the consensus of authors of good repute, or even the clear statement of one eminent author, may be taken as evidence of the accepted practice where practice is not shown to be otherwise. "Vattel" said Lord Stowell in a leading case on the right of visit and search "is here to be considered, not as a lawyer merely delivering an opinion, but as a witness asserting the fact—the fact that such is the existing practice of modern Europe."[2] It is equally plain that no State can maintain claims to exercise a novel jurisdiction over citizens of other States by appealing to the Law of Nature in the sense of the opinion entertained by itself alone of what is right and convenient in the case. An argument really of this kind was urged with great ability and eloquence, but without success, by the counsel for the United States in the Bering Sea arbitration. All this, again, is in strict agreement with the general principles of natural law. No particular opinion of this or that learned person, much less of an interested party, can make that reasonable which is not acceptable as such to the general opinion of civilised mankind.

In this country questions of International Law have mostly arisen in Admiralty jurisdiction, and our classical authorities consist to a great extent of Lord Stowell's judgments on points arising out of the exercise of belligerent rights at sea in the war against the French Republic and Empire. There is no doubt whatever as to the kind of law that Lord Stowell thought he was administering. It was *ius gentium* in the fullest sense, a body of rules not merely municipal, but cosmopolitan. For him the Court of Admiralty was a court of the law of nations, and of the law of nations only, not intended to carry into effect the municipal laws of this or any other country. "The seat of judicial authority is locally here, in the belligerent country, according to the known law and practice of nations, but the law itself has no locality."[3] As for the opinion that nations are bound by the law of treaty only, and there is no other law of nations but that which is derived from positive compact and convention, Lord Stowell rejected it as fit only for Barbary pirates.[4] We must either admit that modern International Law is a law founded on cosmopolitan principles of reason, a true living offshoot of the Law of Nature, or ignore our own most authoritative

[1] See Cockburn C.J.'s observations in *R.* v. *Keyn*, 2 Ex. Div., at pp. 202–3, which seem to overlook the true doctrine laid down long before by Lord Stowell.

[2] *The Maria*, 1 Rob., at p. 363. To the same effect, quite lately, the Supreme Court of the U.S. per Gray J., *The Paquete Habana, The Lola* (1899), 175 U.S. 677, 700.

[3] *The Maria*, 1 Rob. 341, 350; *The Two Friends*, 2 Rob. 280; *The Walsingham Packet*, *ibid.*, at p. 82.

[4] *The Helena*, 4 Rob. 7.

expositions of it. In fact, these utterances have been wholly ignored, so far as I know, by English publicists of the extreme insular school.

"Natural Justice" in the Modern Common Law.—Although the medieval mould of natural law was broken, the substance of its ideas passed into the common stock of European publicists through the new learning of the law of nations, and their influence was manifest in a rationalist movement which had many branches—rationalist because the Law of Nature is essentially so. This last statement would have been a truism in the sixteenth century, and is still familiar on the Continent; it may seem a paradox to some English readers nowadays, but it remains true. Scotland, kept by political traditions in closer touch with Continental thought than England, had an important share in spreading the movement in these kingdoms. It was no accident that our two great rational law reforms of the second half of the eighteenth century were carried out by Lord Mansfield, a Scotsman by birth.

The Law Merchant.—First of these must be mentioned, though this is not the place for a full account, the definite adoption of the law merchant as part of the Common Law. That body of custom had anticipated some of the characters of International Law; it claimed an authority independent of any particular local jurisprudence, as being founded on general reason and usage approved as reasonable; in other words, it was a branch of the Law of Nature, and it was constantly described as such. Under Lord Mansfield it was received, not as a collection of rules to which only legislation could add, but as a coherent system which did not lose its vitality and power of development from within because it was incorporated with the law of the land. Such, at least, is the better modern opinion as to its present standing.[1]

The "Common Counts."—Hardly less important was the introduction in Common Law procedure of a liberal and elastic remedy on causes of action *quasi ex contractu*. Blackstone, following Lord Mansfield's creative example as a faithful expositor, said in so many words of this class of actions—those of which the count for "money had and received to the plaintiff's use" is the type—that they arise "from natural reason and the just construction of the law."[2] Thus the whole modern doctrine of what we now call quasi-contract rests on a bold[3] and timely application, quite conscious and avowed, of principles derived from the Law of Nature.

The Reasonable Man.—One of the most characteristic and important features of the modern Common Law is the manner in which we fix the

[1] See Mr. F. B. Palmer's article in the *Law Quarterly Review* for July, 1899 (xv. 245).

[2] Blackst., *Comm.* iii. 161. The best known statement by Lord Mansfield himself is in *Moses* v. *Macfarlan* (1760), 2 Burr. 1005.

[3] "Lord Holt used to say that he was a bold man that first ventured on them [the general or common counts], though they are now every day's experience."—1 Wms. Saund. ed. 1871, 366.

measure of legal duties and responsibilities, where not otherwise specified, by reference to a reasonable man's caution, foresight, or expectation, ascertained in the first instance by the common sense of juries, and gradually consolidated into judicial rules of law. The notions of a reasonable price and of reasonable time are familiar in our law of sale and mercantile law generally. Within the last century and a quarter, or thereabouts, the whole doctrine of negligence has been built up on the foundation of holding every lawful man answerable for at least the amount of prudence which might be expected of an average reasonable man in the circumstances. Now St. German pointed out as early as the sixteenth century that the words "reason" and "reasonable" denote for the common lawyer the ideas which the civilian or canonist puts under the head of "Law of Nature."[1] Thus natural law may fairly claim, in principle though not by name, the reasonable man of English and American law and all his works, which are many.

Open Questions of Principle in the Common Law.—Sometimes, though not often, questions have come before our Courts of purely municipal jurisdiction which were so much "of first impression" that there was really no applicable authority at all. Upon such questions, topics of argument were necessarily sought in the most general principles of justice and convenience, and discussed and weighed with very little reference to any more specific test. A medieval lawyer would have said of such questions that, since positive law did not afford any solution of them, they were soluble by the Law of Nature only. The best known example in this kind is the long-continued controversy on the existence of copyright and other analogous rights at Common Law, independent of legislation—a controversy which produced a great body of ingenious argument and more than one notable conflict of judicial opinions. We have no occasion to say anything here of the merits or of the result, which dialectically was a drawn battle,[2] but only to note that the arguments and opinions on both sides were *Naturrecht* pure and simple.

Natural Justice in Quasi-Judicial Acts.—The principles of natural justice are recognised and applied by name in the class of cases where our Courts have had to review the exercise of quasi-judicial powers by the boards, committees, or other governing bodies, however described, of divers institutions and societies. There is a preliminary question whether the power which the governing body has purported to exercise against an individual was "judicial" or "absolute." An absolute discretion for which no reasons need be given may be conferred either by Statute or by the

[1] See *Journal Comparative Legislation*, 1900, at p. 432.

[2] The last judicial discussion was in 1854—*Jefferys* v. *Boosey*, 4 H.L.C. 815. There the judges were divided, and the House of Lords unanimous for the negative opinion. But the actual final decision was not that copyright did or did not exist at Common Law, but that, if it ever did, it had been abolished by the Statute of Anne which conferred copyright for a term of years.

agreement of the persons concerned (for example, by the terms on which an appointment has been offered and accepted), and such a discretion, where it has been conferred, cannot be impeached on any ground short of fraud. In other cases the Court will consider whether the rules of natural or universal justice have been observed; the expressions are synonymous and equally current. Those rules are, for this purpose, that when a person is deprived on the ground of alleged misconduct of an office or honourable rank, or of an interest in property administered [1] by an association for the benefit of its members, he must have notice of the charge against him and an opportunity of being heard, and the special rules, if any, governing proceedings of that kind in the institution or society in question must be exactly followed, and the decision must be arrived at in good faith, with a view to the common welfare. If these conditions are satisfied, the Court will not examine the merits of the decision as if it were sitting on an appeal. The jurisdiction is not of an appellate, but of a prohibitory nature; it is paramount to the jurisdiction of the "domestic tribunal," which, on the other hand, is not interfered with so long as it does not offend against the paramount rules of universal justice.

Even in the case of a summary executive authority founded on necessity (which may be said to be itself a matter of natural right), the rules of natural justice must be observed so far as practicable. The master of a ship has such an authority, and this is perhaps the only known case.[2]

Disregard of Natural Justice by a Foreign Court.—It would be a strong extension of these principles to apply them to the judicial acts of a competent foreign tribunal within its jurisdiction, and it is not known to have been actually done in England. Still, there is some authority for saying that, in an extreme case, a foreign judgment showing manifest disregard of universal rules of justice would itself be disregarded here. In cases where this topic has been suggested, other more definite grounds of objection have been present, such as want of jurisdiction. But judges of great eminence have claimed for our Courts a reserved power of taking the broader ground at need. It is certain, on the other hand, that our Courts do not pretend to review the manner in which a foreign Court administers its own rules of procedure, nor to require that foreign procedure should conform to any of our merely local standards.[3] The exclusion of witnesses on the ground of interest, for example, is a system which we have discarded, but we cannot complain of its maintenance in other jurisdictions, nor, contrariwise, of the admission in evidence of hearsay and other matters which we should

[1] The legal title to such property is of secondary importance. It may be corporate, or vested in trustees, or held in common by all the members.

[2] *The Agincourt*, 1 Hag. Adm. 271, 33 R.R. 717.

[3] See on this delicate subject Westlake, *Private International Law*, 3rd. ed. 351; Dicey, *Conflict of Laws*, 409; *Simpson* v. *Fogo*, 1 H. & M. 195, the reported case where the strongest remarks occur; *Pemberton* v. *Hughes* [1899], 1 Ch. 781, 790.

exclude. In this region of specific regulation the part of natural law is, as the medieval doctors said, only secondary, and is confined to giving to authentic acts and instruments, in case of doubt, that interpretation and effect which may appear most fitted to work substantial justice.

Conflict of Laws in General.—As to the body of doctrine known under the head of Conflict of Laws or Private International Law, its authority was originally founded on considerations of natural justice, for so much at least is implied in the fact that, though it is not *ius inter gentes*, it has always been deemed to belong to the law of nations in the wider and more ancient sense of *ius gentium*. But it has now for many years been as much part of the municipal law of England as the law merchant, and it becomes daily less and less needful or useful, in any normal case, to cite foreign authorities [1] or resort to general principles of convenience. The ideal is still cosmopolitan; the actual law of the Courts is national; and I believe this is so, or tending to be so, in other countries also.

The Common Law beyond Seas.—Students of comparative jurisprudence need not be reminded that there are extensive territories under British dominion in which English law has never been received as a whole, or introduced by any sovereign act except in particular local jurisdictions and for limited purposes.[2] The most remarkable example is afforded by British India. Here we find that the Law of Nature has played a singular and almost paradoxical part. It has been the means of effecting a large importation of English ideas and principles in regions where any formal Common Law jurisdiction was not only not asserted, but formally disclaimed.

"Justice, Equity, and Good Conscience" in India.—In the early days of our Indian settlements European traders, like all persons in Eastern countries, were presumed to carry their personal law with them. The charter of 1683, principally intended for Bombay, seems to have contemplated a Court administering to such traders, not the Common Law, but the law merchant. If this experiment proceeded at all, as I think it did not, it left no permanent mark. In the following century the Supreme (now High) Courts of the Presidency towns were established by the authority of Parliament to administer English law to European British subjects within limited territorial jurisdictions.[3] Otherwise, neither the King's Courts nor

[1] This is not subject to any exception as to the ascertainment of foreign law in the particular case; for that, in our system, is matter not of authority but of evidence, though parties may, and often do, agree to put in the text of a foreign Code, or appropriate parts of it, instead of calling foreign experts to prove their law.

[2] In one Crown colony, Trinidad, there has never been any wholesale reception of English law, but a series of enactments has anglicised one branch after another till there is practically nothing else left in either substantive law or procedure. There may be other examples unknown to me, but such cases are of little general importance, and they do not belong to the present inquiry.

[3] For authorities and details see Sir Courtenay Ilbert's *Government of India*, and, for the earlier history of the Supreme Court of Calcutta, Cowell's *Courts and Legislative Authorities in India*, lects. ii. and iii.

the East India Company's Courts were authorised or, in fact, assumed (after a transitory stage of disastrous experiment) to administer English law as such. They were directed to do justice according to the native laws of the parties, if applicable rules could be found. But it often happened that no such rules could be found, and some general provision had to be made. A Bengal Regulation of 1793, substantially copied at various intervals of time in the other Presidencies and provinces, laid down that in such cases the judges were "to act according to justice, equity, and good conscience." These words, down to the end of the eighteenth century, could only be read by any publicist or trained lawyer as synonymous with the Law of Nature. But no detailed system of the Law of Nature has ever acquired general authority. We may safely assume that the attempts of European publicists to construct such systems were unfamiliar to the vast majority of the company's officers; we know that English utilitarianism, which its votaries would have been only too eager to turn loose on the *mufassal*,[1] was only just born. English officials in India being what they were, "an Englishman would naturally interpret these words ['justice, equity, and good conscience'] as meaning such rules and principles of English law as he happened to know and considered applicable to the case; and thus, under the influence of English judges, native law and usage were, without express legislation, largely supplemented, modified, and superseded by English law."[2] In our own time this has been judicially approved as the proper course. Equity and good conscience, we are told by the Judicial Committee of the Privy Council, are generally interpreted to mean the rules of English law if found applicable to Indian society and circumstances.[3] The moral predominance thus acquired by the Common Law in British India may be compared with that which was acquired by the Roman law, not as positive law, but as "written reason," in the *pays de droit coutumier* of the French monarchy.

The Island of Penang under the Law of Nature.—There is a singular case of a British possession in the East having been abandoned (it will be seen that no other term is possible) to the Law of Nature for several years.[4] In 1786 a native Raja purported to cede Penang, then uncultivated and unsettled, to an officer of the East India Company. Possession was taken, under orders from the Governor-General and Council of Bengal, "in the name of his Majesty George the Third and for the use of the Hon'ble English India Company." The intention was apparently to put Penang under the Bengal Regulations, or at any rate the power to make

[1] The correct spelling, *mufassal*, has been officially adopted for some time. The common Anglo-Indian form, *mofussil*, is a solecism.

[2] Ilbert, *op. cit.* 394.

[3] L. R. 14 Ind. App., at p. 96.

[4] Walter J. Napier, *An Introduction to the Study of the Law Administered in the Colony of the Straits Settlements*, Singapore, 1898, a very interesting pamphlet, from which the facts in the text are derived.

Regulations. But difficulties were raised as to the Governor-General's jurisdiction, and the result was that for twenty years (except for a few provisional directions issued by the Governor-General on emergency)[1] there was no positive law in Penang. At any rate, nobody knew whether there was any, or if any, what; and in 1803 the judicial officer of the island reported that the Law of Nature was the only law he could find to guide him. He also found its guidance inadequate for determining questions of succession and administering estates,[2] which, indeed, was exactly what any medieval doctor (not to say Aristotle) would have told him to expect. At last, in 1807, the Crown came to the rescue, and a regular Court was established by charter.

It would seem, in the light of later authorities and discussion, that the learned magistrate might properly have followed the example of the Company's Court in the *mufassal*, and administered under the name of justice, equity, and good conscience, as much English law as he thought reasonably applicable to the local circumstances. However that may be, the effect of the charter and subsequent legislation and usage was to introduce English law as the territorial law of Penang, and ultimately of what are now called the Straits Settlements as a whole. But the part of the Law of Nature was not yet played out.

The population of the new settlements included a large number of Malays, Hindus, Chinese, and possibly other Orientals, all of whom continued to observe their native customs in matters of religion and the family. No provision for administering their native personal laws to native suitors was ever made by any charter or other legislative act. The Straits Settlements were, indeed, under the Government of India for more than a generation (1830–1866); but nothing took place during that time which could operate as a "reception" of the Bengal Regulations or any of the

[1] The local Government purported to make Regulations, but clearly had no authority to do so: Napier, p. 6.

[2] "His Excellency in Council has been heretofore informed that Prince of Wales' Island, prior to its cession in 1785 [should be 1786] was under the dominion of a chief who governed arbitrarily and not by fixed laws. It is now become my painful duty to state that it has so continued to be governed without fixed laws; for upon the hour of my arrival on this island, there were not any Civil or Criminal laws then in existence, and there are not even now any Municipal, Criminal, or Civil laws in force on this island. The law of nature is the only law declaring crimes and respecting property which, to my knowledge, at this day, exists at Prince of Wales' Island; and as Judge, it is the only law which I can apply to the Criminal and Civil suits brought in judgment before me. But as the law of nature gives me no precepts respecting the right of disposing of property by wills and testaments, the rights of succession and inheritance, and the forms and precautions necessary to be observed in granting Probates of Wills and Letters of Administration to intestates' effects, or respecting many things which are the subject of positive law, I have often been much embarrassed in the execution of my duty as Judge in the Court of Justice in which I preside; and many cases there are in which I am utterly unable to exercise jurisdiction."—Mr. Dickens' report to the Governor-General, ap. Napier, at p. 5.

Anglo Indian legislation confirming them. Nevertheless, the need for recognising native custom in matters of family law was practically the same as in India; and, after a good deal of discussion, it appears to have been now settled for many years that in a general way "native customs . . . will be recognised unless they be contrary to justice and general public policy."[1] Now the general rule of our authorities is that only so much of existing English law becomes the law of a new English settlement as is reasonably applicable to local circumstances. This may be said already to involve a reference to the Law of Nature, for the appeal to the test of reasonableness is, as we have seen, really the same thing. At any rate, there is no express grant of jurisdiction to administer any other positive law than our own. Again, it will hardly be maintained that Hindu or Mahometan law can ever be binding on English judges, in the cause before them, by its own intrinsic authority. There seems, therefore, to be no other assignable source of the jurisdiction which is in fact exercised than the Law of Nature; in other words the judicial conviction of the Court that in a particular class of cases not only is it not reasonable to apply English law, but it is reasonable to apply the native custom of the parties. It remains open to speculative discussion whether we ought to say that in such cases the Court is free to decide according to the Law of Nature because there is nothing in the positive law generally binding on the Court to exclude or supersede it, or that the Court is bound to follow the Law of Nature because, in the local circumstances and in that class of cases, the Law of Nature is embodied in the Common Law. That the law actually administered is not the native personal law itself is sufficiently shown by the care with which the claims of "justice and general public policy" are reserved as paramount. Thus a considerable part of the inhabitants of the Straits Settlements live to this day, and apparently thrive, as to a considerable proportion of their affairs, under a judicial discretion founded on natural equity alone, and, though no doubt becoming fixed in the way of precedent, never defined by any external authority.

[1] Extract from a judgment of the local Court of Appeal, ap. Napier, p. 39.

BOOTY OF WAR.

[*Contributed by* G. G. PHILLIMORE, ESQ.]

Still Practised in Modern Warfare.—The recent hostilities in China have shown that the practice of allowing troops engaged in warfare to make booty of the public and private property of the enemy captured by their exertions is not yet extinct, at least in warfare with an enemy who is not regarded as entitled to the same international rights or subject to the same international obligations as a Christian power. All the contingents of the allied troops employed in the operations connected with the capture of Tientsin and Peking and the dispersion of the Chinese regular and irregular forces in the adjacent districts, seem to have adopted the practice openly, although it is fair to place against this the action of the French Government in returning to China the loot sent home by its troops, and the reported intention of the United States Government to refund the bullion taken by its troops, on the ground that its retention is not justified in view of the indemnity to be paid by China for the damage done by the Boxer outbreak. It is also stated that the British military authorities have taken steps for placing at the disposal of the Chinese Government the property found and brought in by the British troops after the capture of Peking. The contrast between this course of conduct and that followed in the operations of the South African war, in which no looting has been allowed, but the troops engaged have received a gratuity for their services, may justify a brief consideration of the recent and present view of the subject taken by (1) International Law and (2) the municipal law of Great Britain and other States. It is essential to understand at the outset that booty is still allowable on certain occasions by International Law.

Meaning of the Term "Booty."—In its strict sense the term "booty of war" or "spoils of war" is applied to the movable property taken from an enemy on land, whether belonging to the hostile State or to any of its subjects, as opposed to "conquests" which deal with territory and real property; while "prize" means hostile property captured at sea. At the present day, in strict right all hostile movable property, public or private, is liable to seizure and appropriation by a belligerent. A sufficient illustration of this is the admitted right of hostile forces to destroy the private and public property of an enemy without compensation, if this is required by

military necessity, and to commandeer or exact requisitions and contributions for the use of an invading army from all inhabitants of the invaded country whether under arms or non-combatants, or even neutral residents, without payment. But the general rule and practice at the present day may be said to be that, subject to that necessity, all private property on land which is not available for warlike purposes, or taken from the enemy on the field of battle, is exempt from confiscation and seizure; and for the signatories of the Hague Convention, besides the immunity of private property on land from confiscation, except in case of military necessity (Art. 46), pillage or plunder or the appropriation of hostile private property by individuals for their own purposes is forbidden under any circumstances, even though the town or place where they are be taken by storm (Arts. 28 and 46), and taking the personal effects of prisoners from them, except arms, horses, and military papers, is forbidden (4). By the same Convention it is provided that in the case of the occupation of hostile territority the invading army may take possession of the cash, funds, property liable to requisition belonging strictly to the State, depôts of arms, means of transport, stores and supplies, and generally all movable property of the State which may be used for military purposes; but railway plant, land, telegraphs, telephones, steamers and other ships, apart from the cases governed by maritime law, as well as depôts of arms and generally all kinds of war material, even though belonging to companies or private persons, though they are treated as material which may serve for military operations, and may therefore be seized, must be restored at the conclusion of peace and indemnities be paid for them. This latter provision is, of course, not applicable in a war of conquest where the invading State absorbs *pro tanto* the invaded State; and any public hostile property of this description is recognised to be spoils belonging to the victorious sovereign. The term "booty," therefore, only applies at the present day to

(1) The movable property of the State subservient to warlike operations, and

(2) The arms and equipments taken from hostile forces and personal effects found on the field of battle.

Based on Permission of the Victorious Sovereign.—The disposition of the booty is a matter entirely within the discretion of the victorious sovereign; but it has been the practice up to quite recent times, as regards (1), to allow the capturing troops a share in the captures; and as regards (2), the captors are generally allowed to take the full benefit of their captures. But in any case the principle has been long recognised by writers on International Law, and acted upon by commanders in the field, that all acquisitions by soldiers in war (and *à fortiori*, private individuals) ensue to the benefit of the sovereign whose agents they are, and appropriation by individuals of enemy's property is only justifiable by the permission of their sovereign. To quote only a few authorities:—

Vattel, Chitty's edition (1834), bk. iii. c. ix. § 164:—

All movable property taken from an enemy comes under the denomination of booty. This booty naturally belongs to the sovereign making war, for he alone has such claims against the hostile nation as warrant him to seize on his property and convert it to its own use. His soldiers and even his auxiliaries are only instruments which he employs in asserting his right. Whatever they do is in his name and for him. . . . But he may grant his troops what share of the booty he please. At present (1700) most nations allow them whatever they can make on certain occasions when the general allows of plundering—such as the spoil of enemies fallen in the field of battle, the pillage of a camp which has been forced, and sometimes that of a town taken by assault.

Kluber (1831), *Droit des Gens Moderne de l'Europe*, § 253:—

Tous biens mobiliers de l'Etat ennemi est butin qui appartient d'après le droit des gens naturel au gouvernement faisant la guerre, mais aujourd'hui il est généralement abandonné aux soldats qui l'ont acquis.

Twiss (*Law of Nations in War*, 1863), after saying that it is customary on occasions when resistance is pushed to the uttermost and the conqueror exercises his right to seize all the movable property of the enemy as booty for the sovereign to grant to its army a share of the booty taken, which, if it is the immediate result of a pitched battle or the storm of a fortified camp or town, may be all given to the actual captors, while where it is the ultimate result of a general campaign it is usual for the sovereign power to distribute it among all divisions of the army engaged in the combined operations of the campaign, goes on to say that—

In cases where the enemy has surrendered upon terms it is now the practice among Christian nations for the sovereign power not to seize and confiscate as booty of war the private property of private citizens, but to content itself with making prize of all public property of the enemy nation which is of a movable description, such as jewels or treasure or instruments of war and military stores, except State papers and archives, public libraries and museums, religious furniture and pictures and the like (123, 136).

Lieber (*Regulations for the United States Armies in the Field*, 1863, § 45) says:—

All captures and booty belong, according to the modern law of war, primarily to the government of the captor. Prize money, whether by sea or land, can now only be claimed by local law.

Wheaton (*Int. Law*, iv. II. § 5, 1857):—

Private property on land is exempt from confiscation, except such as may become booty in special cases, when taken from enemies in the field or in besieged towns.

Halleck (*Int. Law*, Baker's edition, 1893, ii. 73–75):—

Private property taken from the enemy on the field of battle in the operations of a siege or in the storming of a place which refuses to capitulate is usually

regarded as legitimate spoils of war. . . . It is the general practice in modern times to distribute the proceeds or part of the proceeds of captured property among the captors as a reward for bravery and a stimulus for exertion. When captures are not granted away, they accrue to the use of the government.

Bluntschli (1874, *Droit Int. Cod.*, § 645, 659, and 660) :—

Le droit de butin actuellement est interdit sauf les exceptions : (1) la fortune de l'Etat avec laquelle on est en guerre, c'est à dire, le trésor de l'armée, armes et munitions, magasins de vivres, voitures et autres moyens de transport destinées à l'armée et de tous les biens directement destinés à la guerre—l'armée qui s'en est emparée en disposere librement pour son usage a moins de décision contraire de l'Etat vainqueur : les drapeaux, canons et fourgons, caisses de l'armée, et tout matériel de guerre appartenant à l'Etat ennemi doivent être livrés aux autorités militaires par ceux qui s'en sont emparé ; (2) les armes et toute equipement (sauf argent et bijoux) des soldats vaincus.

Calvo (1884, *Butin*) :—

Ou peut considérer comme mutuellement abrogé le droit de faire du butin, à part quelques rares exceptions dont les principales consistent dans la fortune de l'Etat avec lequel on est en guerre et les equipements des soldats vaincus et la contrebande de guerre.

Phillimore, Field, Walker, and Hall express similar opinions : and our own *Manual of Military Law* (1899) says that—

Property of the enemy found on the field of battle in a camp taken by assault or a town delivered up to pillage forms the spoils of war under the name of booty. It does not belong to the troops who actually capture it. By English law it is technically the property of the sovereign. Practically it is distributed by order of the sovereign among the army of which the troops who made the capture form part. Any property seized in pillage must be taken from the individual captor and distributed as booty of war among all the persons composing the capturing force.

It is, therefore, the international practice now not to make booty of private property except that taken on the field of battle ; but the public movable property of the hostile State may be booty for the captors if their sovereign so allows.

English Law.—The practice of the last hundred years in England has been substantially in accordance with the recognised rules stated above ; and, except for private property captured in a town taken by assault or on the field of battle, which the captors were allowed to appropriate, only the movable property of the hostile State captured by the exertions of the troops has been treated as booty. The only exceptions to this rule are the cases of the booty taken by the army in the Indian Mutiny ; but in the case of rebellion special considerations arise, and the property of rebels being forfeited to the sovereign may be granted by him to his troops. It will be seen later on that there still exists in England a complete statutory procedure and sanction for the distribution of booty among the troops on proper occasions ; and some instances may be quoted to show

what has been regarded as booty of which the captors could, as of a matter of settled practice, take the benefit by favour of the Crown.

At Seringapatam in 1799 there was found specie to the value of sixteen and three-quarter millions star pagodas; jewels and gold and silver bullion to the value of twenty-five million pagodas; pepper, paddy, salt, copper and brass pots, carpets, elephants, camels, horses, cloths to the value of two million pagodas—amounting to a total value of forty-five million pagodas; and nine hundred and twenty-nine pieces of ordnance, besides vast military stores and equipments. Of these the Governor-General reserved for the ultimate decision of the King all the ordnance, ammunition, military stores, and grain, and ordered the treasure and jewels to be at once distributed among the captors (Maxwell, *Wellington*, i. 75).

Wellington's Advice.—In 1804 General Wellesley (afterwards the Duke of Wellington) advised the Governor-General of India to give the troops a sum of money instead of the value of the ordnance and military stores captured by them at Jaffierabad. At Bordeaux in 1814, when the Duke's army entered the town, there was found there a quantity of tobacco belonging to the French Government, articles of merchandise confiscated by the Government, salt and colonial produce kept in the Government stores as security for the payment of Government duties, and wine kept in the same place as security for repayment by individual proprietors of loans made to them by the French Government, all of which were handed over to French officers on condition that they should be forthcoming for the use of the army, "to whom they belonged as a right of war." At Thorshaven, one of the Faröe Islands taken from the Danes by a naval expedition in 1809, the terms of the capitulation were that all private property should be respected, and that all Government property should be at the disposal of the captors; and some merchandise and moneys belonging to the King of Denmark which were not delivered up under the capitulation and were afterwards taken possession of by an English privateer visiting the island, which had been left to the administration of the Danish officials there, were held in the Prize Court to belong to the Crown (Edwards, 102). In the Peninsular war the British army, and the naval forces acting with it, made captures of stores, guns, and ammunition to the value of £916,000, for which they received a grant from Parliament, the share of the navy coming to £116,450 (1 Hagg. 39). The Deccan booty taken in the Mahratta war of 1817–18 included jewels abandoned by the Peishwa but concealed, deposits of money made by him in the hands of individuals for services not performed and refunded, debts due to him, and tribute and arrears of revenue due to him from the East India Company, ordnance, and army artillery; for all the property of an absolute sovereign, whether public or personal, was held to pass to the conqueror (*Adv.-Gen. of Bombay* v. *Amerchund*, 1 Knapp 329). The Pegu booty (1860) comprised bells, bullion, and timber; the Lucknow booty, gold, shawls, jewels, and dresses; the Delhi booty, Crown and other jewels, shawls,

arms, elephants, horses, and ordnance to the value of 35 lacs 47,000 rupees. For the capture of Delhi the troops received six months' *batta* (pay), and to prevent any claim being raised by them to the value of the guns and ammunition taken, they were given a second six months' *batta*. The famous Banda and Kirwee booty comprised coin, bullion, jewels, artillery and arms, a well-equipped arsenal, stands of arms, and a large quantity of valuable treasure belonging to the Mahratta chiefs, and also debts due to them from the East India Company on loan, and from private individuals, which were collected by the civil officials of the company. Of these, the debts and securities, the ordnance, ammunition, and military stores, including grain, were reserved to the Government, but the treasure and jewels were distributed, and the Kirwee jewels alone realised £700,000.

Debts as Booty.—An example of debts due to a conquered government being treated as booty which is of interest in connection with the recent declaration of the British Government that, as successor of the late Transvaal Government, it has no title to recover the indemnity payable by the British South Africa Company in respect of the Jameson Raid in 1896, is afforded by the case of *The Capture of Chinsurah* (1799, 1 Acton 179). This was the capture of a factory of the Dutch East India Company in 1766 by the joint forces of the British East India Company and the British navy; and a claim was made on behalf of the Crown to the Privy Council that a sum of money (amounting to £23,000 odd) which was in the hands of the East India Company should be condemned to the Crown as prize. A sum of this amount had been advanced by the Dutch Governor to a British subject upon contracts made by the Governor on behalf of the Dutch East India Company with him for supplying the Dutch factory with manufactures; and after the capture the British company brought an action against the debtor in the Courts in India, claiming to be entitled to it as captors. The claim being rejected, an agent of the company then took an assignment of this debt from the Dutch Governor for a consideration, and in a suit against the debtor recovered the full sum for the company. The Privy Council held that this money did not come within the terms of the grant of prize by letters patent of the Crown to the company, and that the company only held it as agent for the Crown, which was entitled to it as prize.

In the Peninsular War.—An illustration of booty taken on the field of battle is given by Larpent, who was Judge Advocate in the Peninsula, 1812–14. In his diary he says that after the battle of Vittoria nearly a million pounds' worth of property was taken, including £250,000 in gold, but that only 120,000 dollars were paid into the army chest:—

> One gentleman whom I examined yesterday intended to keep 2,000 dollars. At the same time, the understanding that this was all fair seems to be pretty general. . . . Major D—— has still got his prize, taken on the field of battle—namely, a Spanish girl, a pony, the wardrobe, monkey, etc., the property of one

of King Joseph's aide-de-camps. . . . Out of £500,000, the supposed plunder, only about £30,000 has found its way to the treasury or military chest.

In times when property found in a captured town could be claimed as booty by the captors, the question often arose with regard to property which had belonged to British subjects, who reclaimed it by right of *postliminium*. Thus, at the capture of Baroach in 1803 by the British troops, property belonging to British merchants in course of lawful trade with that place was claimed as booty; and the Duke of Wellington (then General Wellesley), in answering an enquiry on the subject, referred to the case of the booty taken at the capture of St. Eustatius during the American war, in which a vast quantity of British property, certainly contraband of war and intended for the supply of the enemy, found in the island, was claimed by the captors as prize, but the decision was in favour of the merchants.

Land and Sea Warfare: Postliminy.—At the present day, when private property on land is hardly ever the subject of booty (although the case might well have turned up for solution in the Chinese disturbances), the question is of interest only in connection with the principle of salvage on recapture by British forces of property captured from British subjects by an enemy. The rule is always stated to be that in land war movable property after it has been in the complete possession of the enemy for twenty-four hours belongs absolutely to that enemy without any right of postliminy in favour of the original owner, if it be afterwards recovered by his countrymen; while in sea warfare, although originally the same strict rule prevailed, municipal regulations of most States have equitably extended the right of postliminy as against recaptures by their own subjects, and property taken at sea by an enemy which is either recaptured or rescued from him by fellow-subjects or allies of the original owner does not become the property of the recaptor or rescuer, but is restored to the original owner on terms of salvage (Phillimore, *Int. Law*, cccciv. vi.). The Naval Prize Act of 1864 fixes the salvage on recapture by British ships of war of British ships or goods taken as prize by the enemy at one-eighth of the value of the property, subject to which the property is restored to its original owner. But there is no provision of the Statute, nor (it seems) Common Law, applying this principle of postliminy to booty or captures on land, although it may be said it is only consistent with the doctrine of the private property of an enemy being exempt from seizure that the property of a friend shall be exempt from having to pay salvage on its recovery. Such writers on International Law as Calvo (Dict. *Postliminie*), Wheaton (*Int. Law*, Part IV. ch. II. § 11), and Halleck (*Int. Law*, 501 and 504) all express the same view, that there is no postliminy in favour of the original owners of movable property taken on land. But the result is the same as if there were, for such property now, by the capture, passes to the sovereign of the captors like any other booty, and he is hardly likely to impose a liability for salvage on his own subjects for his own benefit.

Status of Booty in English Law.—The *status* of booty, or the right to property captured in war, in English law has been defined by the highest authorities in the same terms as those already quoted by International Law writers—namely, that, like prize, it belongs to the State and is at the absolute disposal of the Crown. Lord Stowell states it unequivocally :—

> Prize is altogether a creature of the Crown: no man has or can have any interest but what he takes as the mere gift of the Crown. This is the principle of law on the subject, and is founded on the wisest reasons. The right of making war and peace is exclusively in the Crown; the acquisitions of war belong to the Crown; and the disposal of these acquisitions may be of the utmost importance for purposes both of war and of peace. This is no peculiar doctrine of our Constitution; it is universally received as a necessary principle of public jurisprudence by all writers on the subject. *Bello parta cedunt reipublicæ* (*The Elsebe*, 1804, 5 C. Rob. 174).

Lord Lyndhurst and Lord Brougham express the same view as being one beyond dispute (*Alexander* v. *Duke of Wellington*, 1830, 2 R. & M. 35) :—

> The Crown possesses this property *pleno jure*, absolutely and wholly without control, may deal with it entirely at its pleasure, may keep it for its own use, may abandon or restore it to the enemy, or finally may distribute it, in whole or in part, among the persons instrumental in its capture, making that distribution according to whatever scheme and under any regulations which it may think fit (*ibid.*).

The municipal Courts cannot consequently take cognisance of a claim relating to booty, or entertain proceedings against persons acting under the directions of the Crown in its distribution (*ibid.*); nor have they jurisdiction to adjudicate upon the seizure of private property effected under military authority in a country conquered (but not annexed), although civil Courts of Justice are sitting there, *bello non flagrante sed nondum cessante* (*Elphinstone* v. *Bedreechund*, 1830, 1 Knapp 316). In the case of booty, no adjudication is required either by International or by municipal Law, in order to vest the property, as is necessary in the case of prize. The mere act of capture followed by possession for a definite period (generally twenty-four hours) gives a good title against the former owner. This prerogative of the Crown prevails wherever its forces are engaged, within or without its dominions; but in some cases by its own act it has imposed limitations on itself in favour of its subjects. In India by letters patent of 1758 the Crown granted the East India Company the right to booty taken by its troops, and the company asserted its rights on several occasions; but in cases where British troops had co-operated with these, the Crown reserved to itself the disposal of property in all forts thus captured, except military stores, half of which went to the Company under their charter. In Wellington's dispatches (Gurwood's selection, III.), the Duke points out in a letter of 1803 that the only claim which the troops have to prize property is that "the Crown has been pleased from time to time to grant this property to the troops employed

in the capture of the fort where it is found, and occasionally the supreme British authority in India has taken upon itself to anticipate the Royal intentions and give the property to the troops."

Finally this is made clear by the express terms of the Army Prize Act, 1832 (2 Will. IV., c. 53, § 2), reproducing the language of the earlier Act of 1814:—

> All captures made by his Majesty's army of any fortress or possession of his Majesty's enemies, or of any ship or vessel in any road, river, haven, or creek belonging to such fortress or possession, and in all captures, expeditions, or actions from which prize money, booty money, or grant shall arise, the commanders and other officers and soldiers engaged therein shall have such right and interest as his Majesty shall think fit to order in all the arms, ammunition, stores of war, goods, merchandise, booty, prize, and treasure belonging to the State or to any public trading company of such enemies which shall be found in such fortress and possession or captured in or granted for any such expedition or action, to be divided into such proportions and according to such general rules of distribution for the army as shall be established by his Majesty, or in default thereof in such manner as his Majesty by his sign manual shall be pleased to direct.

The King's Regulations for the Army (V. 15) provide that "prize money, which is solely the property of the Crown, must in all cases be dealt with in accordance with Acts of Parliament on the subject, and is on no account to be distributed by officers in command of troops in the field."

The Army and Prize.—Closely connected with the subject of booty, and therefore deserving a passing notice, is the right of the army to prize (ships or goods) taken in land expeditions conducted by its forces jointly with the navy under the Naval Prize Acts (now 1864). Previously to the Prize Acts of George II. (1740 and 1744), following on the Prize Proclamations of William and Mary (1691), prize money could only be awarded for property captured at sea by naval forces. These Acts first allowed the army, when taking part in combined operations with the naval forces resulting in the "capture of any fortress upon the land, or any arms, ammunition, stores of war, goods, merchandise, and treasure found therein belonging to the State or to any public trading company of the enemies of the Crown of Great Britain, to share in any prize or grant or money thence accruing"; and the Army Prize Act, 1832, has further provisions entitling the land forces to share in the prize adjudicated upon by the Court of Admiralty (§ 29). There are many instances in the books of prize taken by joint expeditions of the two services, and consequent disputes between them: *Toulon* (1793, 2 Knapp 103, note); *Buenos Ayres* (1811, 1 Dod. 28); *The Dordrecht* (1799, 2 C. Rob. 64, capture of Cape of Good Hope); *Trinidad* (1804, 5 C. Rob. 92); *Cayenne* (1822, 1 Hagg. 41, note); *Peninsula* (*ibid.* 39); *Genoa and Savona* (2 Dod. 88); *French Guiana* (*ibid.* 151). *The Stella del Norte* (5 C. Rob. 349) was a case of joint capture by an English fleet and Austrian troops.

In the Crimean war a grant was made of the value of certain booty taken

at Kertch and Yenikale consisting chiefly of military stores amounting to £80,000; of this the navy had three quarters and the army one quarter. The French forces co-operating took their share of the captured stores; and for the operations in the Crimea, the shares of prize falling to the forces of each ally were settled by convention.

The army has also been allowed to share with the navy in prize money for recapture of British vessels and goods from boats, under a Prize Act which gave salvage on recapture by a "ship of war, privateer, or other ship, vessel, or boat," Lord Stowell holding that the spirit of the Act—which, like the present Army Prize Act, allowed the army to share in prize acquired on a conjoint expedition—included recaptures as well as captures jointly made with the navy (*The Ceylon*, 1811, 1 Dod. 216). The army has also on one occasion been awarded prize or salvage on recapture effected by its own exertions without the co-operation of a naval force—namely, at the capture of Oporto by the British and Portuguese military forces acting together under Sir Arthur Wellesley (as he then was), when salvage was claimed on all the British and Portuguese ships, and goods which had been laden on board them, found in the port. The claim was allowed as regards the delivered English ships and goods, but was disallowed as regards the Portuguese ones, on the ground that the Portuguese forces were only reoccupying a town belonging to their sovereign whose rights and those of his subjects thereupon revived unimpaired, and their allies could not stand in a better position (*The Progress*, 1809, Edwards 210).

Jurisdiction over Booty.—Questions of booty were originally dealt with by the Court of Chivalry held before the Constable and Marshal of England, which exercised jurisdiction over "contracts touching deeds of arms and war without the realm which cannot be determined by the Common Law as touching prisoners, prize, etc., and in these proceedings the customs and laws of war used to direct its judgment" (*Army of the Deccan* case, 2 Knapp 150, editor's note); but when a Constable was no longer appointed, and the Court consequently became obsolete, the adjudication of these questions was generally referred by the Crown either to the Lords of the Treasury or the Privy Council or the Court of Admiralty. In the *Buenos Ayres* case a petition by the army to the Crown that it might share in the prize with the navy, on its being brought before the Privy Council, was referred by it to the Court of Admiralty. In the *Deccan* case a memorial to the King in Council complaining of a scheme for the distribution of a grant of booty taken in the Deccan war, which had been prepared by the Treasury, was referred to a Committee of the Privy Council, which advised the Crown to refer it to the Treasury, and declined to constitute itself a court of appeal from the decision of the Treasury with regard to grants by the Crown of property accruing to it by virtue of its prerogative. In the *Toulon* case, where the army claimed that a grant of head money and gun money made to the naval forces for the capture of the

arsenal might be recalled, and the army allowed to share in it, the Privy Council, after hearing arguments, advised the rejection of the application.

The usual course was, however, as in the *Deccan* case, for the Crown to grant a warrant to trustees, usually officers of high standing, to collect, recover, and receive the prize, and to prepare a scheme for its distribution according to principles therein stated, which was then submitted to the Treasury for the signification of the Royal pleasure thereon. This warrant was not absolute or final, and created no vested interest in any particular individuals as objects of the Royal bounty, nor could the persons who would be the proper objects of it compel its distribution by suit in equity against the trustees, as if they were beneficiaries under a trust; and it was revocable by the Crown at any time.

This system was open to the criticism made upon it by Lord Stowell and others, that it assigned the judicial duty of deciding who the objects of the bounty shall be to a non-judicial body; and the fact that the Admiralty Court could deal with the claims of the army to prize taken in conjoint expeditions of the navy and army under the Prize Act, and was equipped with a store of analogies furnished by the prize decisions of Lord Stowell and his successors, pointed to that Court being also given direct jurisdiction over booty. The Admiralty Court Act of 1840 accordingly gave a power to the Court "to decide all matters and questions concerning booty of war or its distribution which it shall please the Crown to refer to its judgment, and in all matters so referred the Court was to proceed as in cases of prize of war, and the judgment of the Court was made binding on all parties concerned." This power was, however, allowed to lie idle till in 1866 the great case of the Banda and Kirwee booty was referred to the Court, in which Dr. Lushington's judgment gives a detailed history of the whole subject and sets out the principles on which the Court, conformably with its practice in cases of prize, determines the title to share in booty.

The grant of this jurisdiction to the Admiralty Court does not, however, affect the prerogative of the Crown to decide whether booty shall be given or not. In the *Banda and Kirwee* case, after the decision of the Admiralty Court had been given as to the title to share in the booty, the successful claimants applied to the judge of the Admiralty Court, Sir Robert Phillimore, to order that the booty other than that of which the distribution had been referred by the Crown to the Court should be brought into the registry of the Court to abide the event of the suit. It was shown that the Governor-General of India, with the subsequent approval of the Court of Directors and the Board of Control, had proclaimed in 1857 that property taken by the troops which was the property of the State or that of private individuals recovered from the mutineers should be booty; that property taken by the troops which was neither claimed on behalf of the State nor claimed and identified by individuals establishing their loyalty should be prize; and that all movable property of the description ordinarily distributable belonging,

or reasonably presumed to belong, to rebels or mutineers, and which had been or should be captured by the troops engaged in suppressing the rebellion, might fairly be treated as prize. In the captures made in 1858 at Jhansee, Kalpee, and Gwalior, 490,000 rupees in booty were taken; at Banda and Kirwee, 7,000,000 rupees; at Ahvah Kotah and Burcos, 1,000,000 rupees; but only 1,750,000 rupees had been distributed. The public and private debts of the Mahratta chiefs, amounting to 2,500,000 rupees, were also withheld, the debtors being the East India Company and private individuals, from whom the debts were collected after their surrender by civil officers of the company, as also was the value of jewels belonging to those chiefs sold by the civil officers of the company for 119,000 rupees. The Court, however, decided that the Statute gave no power of distribution, but only power to determine who were the persons entitled to booty, the proportions in which they were to share, and the costs and expenses of the suit; and that it had no power to make the order asked for, the reference to the Court not allowing it to enquire into any other matters than those just mentioned (*Banda and Kirwee Booty*, 1875, 6 Aspinall *Mar. Law Cases*, 66 and note).

It has already been pointed out that the Courts of Common Law cannot take cognisance of any questions of booty. This principle was fully discussed and clearly established in the cases of *Lindo* v. *Rodney* and *Mitchell* v. *Rodney* (2 Dougl. 612–614, and 2 Brown P.C. 423), where a British subject brought an action against Lord Rodney, the commander of the naval forces which captured St. Eustatius, for the unlawful taking of his goods there on land, and sought to prohibit the Admiralty Court from dealing with that property in the exercise of its prize jurisdiction. The Court of King's Bench declined to grant the prohibition, and was upheld by the House of Lords. Lord Mansfield in his judgment only glanced at the case of "plunder or booty in a mere continental land war, without the presence or intervention of any ships or their crews, as never having been important enough to give rise to any question, which is often given to soldiers on the spot or wrongfully taken by them contrary to military discipline, and there is no instance in history or law, ancient or modern, of any question before any legal judicature ever having existed about it in this kingdom"; and he declined to enter upon the question, which it was not necessary for them to decide. But in *Elphinstone* v. *Bedreechund*, already referred to, the Attorney-General in his argument said that booty taken under the colour of military authority fell under the same rule as the case of prize in being not determinable by a municipal Court, but only by the authority delegated by the sovereign, or by the sovereign assisted by his Council, and that there were no decisions on such subjects because, as Lord Mansfield said, they are of rare occurrence (1831, 1 Knapp 357); and the Judicial Committee adopted this view.

Practice in Distribution of Booty.—The system of distribution of booty is fully described in the report of the proceedings of the Army Prize

Commission of 1864 (Parliamentary Paper, 1864, R. 3333), as it existed in practice and as it is still regulated by the Army Prize Act, 1832. It can only be said here that the controlling authority in the administration of army prize is Chelsea Hospital, the first money received by it for distribution being in 1809 on account of the capture of Monte Video in 1807. All prize money, whether Indian (for which there is special provision by 29 & 30 Vict., c. 47) or other, passes through its hands. On a grant of booty being made by the Crown, the booty is appraised and sold by prize agents appointed by the commanding officer of the capturing force, and the money realised by its sale is remitted to Chelsea Hospital. In order to ascertain the persons entitled as soon as practicable after the capture, the commanding officers of every regiment or corps entitled to share in the proceeds of the capture, or grant made in consequence of the capture, must transmit to Chelsea Hospital a certified list or prize roll of the persons therein entitled to share. Deserters are not entitled to any prize money, and forfeited or unclaimed shares of prize are applicable for the general purposes of the Hospital.

The recommendations of the Commission were intended to do away with the uncertainty which prevailed as to whether the Crown would grant booty or not on the occasion of a capture. Sometimes the Crown intimated its intention to grant booty beforehand by proclamation at the outset of hostilities—*e.g.*, at the sailing of the Crimean expedition; but often it only did so after the engagement or capture, as was done in the Peninsular and Waterloo campaigns and the Canton operations in 1842. In some cases the military or civil authorities on the spot took it upon themselves to give notice that booty would be given—*e.g.*, the Governor-General of India did so in the Mahratta war of 1803 5, and General Wilson at Delhi. But the prerogative was carefully guarded; and although it had been customary for many years for the Crown to grant booty to the captors, it was not until the Royal pleasure was declared that any right arose. This was often the cause of great delay in the distribution of booty, as the Royal warrant was not issued till the exact value of the booty to be distributed had been discovered, and the prize rolls were not prepared till this was known; and in the evidence before the Commission it appeared that on the average the distribution was made five and a half years after the capture, two cases only having been settled within three years and one having taken as long as eleven years to complete. The Commissioners recommended that there should be a standing proclamation stating in what cases and on what terms the Crown intended in future to grant booty or prize in military operations, or that a special proclamation should be at once issued regulating the question for that specific occasion; that prize rolls should be prepared on any capture; that an approximate distribution should be made at once; that it should be distributed on the principle of actual capture; that the power of referring the question of title to share in booty

to the Admiralty Court should be exercised; that in cases of joint expeditions a special proclamation should be made, and the shares of the two services be declared; that the distribution should be made according to the scale fixed by Lord Herbert's Commission in 1860, the share of the Commander-in-Chief to be a twentieth of the whole. In this connection it may be remembered that Lord Roberts's share of the South African war grant is one six-hundredth. The present practice is, however, to grant a gratuity for a particular campaign to all troops engaged in it—*e.g.* Tirah, Soudan, and South Africa (£1,500,000). The law and practice of other nations with regard to booty may now be briefly dealt with.

United States.—In the United States the only captures of enemy's property which were treated as prize were those made by naval forces exclusively at sea; captures made by the army or by the army and navy conjointly enured exclusively to the benefit of the Government. The United States Admiralty Courts had no jurisdiction over captures on land (*U.S.* v. *Winchester*, 1878, 99 U.S. 372). A seizure of enemy's property by the United States as prize of war on land was held not to be authorised by the law of nations, and only to be upheld by the municipal law of the nation seeking to enforce the forfeiture (*U.S.* v. *1756 Shares*, 5 Blatchf. 232). In *The Emulous* (1 Gallison 563) Mr. Justice Story laid it down that all property captured in time of war belongs to the Government unless granted by them to other persons, and that no private person has the power to make devastation in an enemy's country or to carry off spoil or plunder without the permission of the sovereign, and that the true doctrine of law found in foreign jurists is that private citizens cannot acquire to themselves a title to hostile property unless it is seized under the commission of their sovereign. During the American Civil War an Act of Congress was passed declaring that all the property of rebels was confiscated; it was held under this that besides State property being liable to seizure, private property belonging to non-combatant enemies was also liable to capture if it constituted the chief reliance of the rebels for means to purchase munitions of war and so was a strength to the rebellion—*e.g.*, cotton in the Southern States (*Mrs. Alexander's Cotton*, 69 U.S. 404). Another Act of Congress exempted from confiscation abandoned property, and allowed it to be reclaimed by its owners; it was held under this that property belonging to the hostile organisation or employed in actual hostilities on land was excluded from this benefit, being articles which became by the simple act of capture the property of the captor, such as ordnance, munitions of war, or the like (Chase C.J.: *U.S.* v. *Klein*, 80 U.S. 128, 137).

The United States army regulations, as already above pointed out, declare that all captures of booty belong, according to the modern law of war, primarily to the government of the captor, and prize money, whether by sea or land, can only be claimed under local law; and an Act of

Congress of 1899 (413) has abolished naval prize. Consequently no question of prize or booty can now arise.

France.—In France the provisions of the *Manuel de Droit International à l'Usage des Officiers de l'Armée de Terre* are in accordance with the general law of nations in protecting private property, and forbid pillage or *butin* of either public or private property; but until quite recently there had been a curious and isolated survival of the right of booty in certain cases. Art. 109 (*Prises*) of a decree of May 28th, 1895, allowed *détachements* the benefit of captures made by them, if the property captured had been taken from the enemy. Such property was to be appraised and sold, and its value divided among the troops, the officers taking a certain number of shares according to rank. Arms, munitions of war, and provisions were never to be shared or sold, but compensation was made for their value; horses belonging to the inhabitants found in a capture were to be restored to them, and horses taken from the enemy were to be handed over to the remount department, and their value was distributed among the troops taking them. These *détachements* are defined by Art. 105 of the same decree as bodies in the nature of expeditionary columns intended for the execution of special missions in a limited period of time, and acting independently of the main body, composed of men of all arms. Dr. Henri Fromageot, of the Paris Bar, whose kindness has supplied this information, says:—

> Art. 109 was originally meant for troops or bodies of men more or less regular or irregular known under the name of *corps francs*, *partisans*, etc., and *détachements* have been assimilated to them, They do not correspond either to the present state of military things or to modern warfare. However, the provision has been maintained and continues to be in force as regards *détachements*—*e.g.* the China expeditionary force is a regular body of troops, but in and with this *corps expeditionnaire* itself *détachements* will have been formed. To the ordinary *corps de troupes* or *corps d'armée* Art. 109 does not apply: to the *détachements* it does. It is a somewhat ancient and old-fashioned disposition of law, which should be, and will be, modified some day.

The Article has since been repealed by a decree of June 27th of this year.

An interesting article by M. Charles Malot in the *Journal des Débats* of May 5th, 1901, on the subject of the distribution of booty at Toulon to soldiers of the China expeditionary force then returned home, also criticises this provision, and I venture to quote one passage of it as eminently in point in this connection:—

> La *Service en Campagne*, quoique revisée pour la dernière fois en 1895, a conservé dans quelques parties certains vestiges d'un autre âge qu'il serait expédient de faire disparaître: les dispositions relatives aux parts de prises. . . . Il n'y a qu'une seule catégorie de "prises de guerre" qui soit vraiment légitime: ce sont les armes, munitions de guerre et de bouche, chevaux, matériel et approvisionnement divers pouvant servir à l'ennemi ou contre lui: ceux la sont en tout temps "de bonne prise" et l'on fait bien de s'en emparer; mais ils

doivent être employés aux besoins généraux de l'armée et les particuliers n'y ont aucun droit même s'ils ont contribué à les conquérir, encore moins ont ils droit â l'argent qu'on en peut retenir.

The action of the French Government in returning to China the whole of the booty sent home by its expeditionary force is a striking practical illustration of the justice of this quotation.

Germany.—In 1864 evidence was given before the Army Prize Commission of the practice then existing with regard to booty in the Prussian and Austrian services. The Prussian regulations then in force (some of which dated from 1813) contain the following provisions: "The right to make booty can only be obtained with the consent of the State; the persons who have been conceded this right become possessed of articles of booty by the mere act of taking possession of them. Those who capture munitions of war or provisions must deliver them up for the good of the State; everything else which is found within the enemy's army or with the troops of the enemy under arms or the camp-followers is to be considered as booty. The property of the enemy's subjects, who neither belong to the army nor follow it, can only be made booty of when the commander of the troops gives express permission. Recaptured property reverts to its owner, who must, however, pay a reward to its recoverers; rewards are also given for the capture of horses and guns." Dr. Arthur Sieveking, of Hamburg, however, kindly informs me that "the provisions of the Prussian regulations relating to the right of private individuals in war to appropriate property to themselves are made obsolete by the provisions of the *Bürgerlich Gesetzbuch* (tits. *Beute*, *Kriegsbeute*), which does not recognise any such right, and this is in accordance with the modern law of nations; and that it is only in so far as the necessities of war require it that individuals are allowed to carry off munitions of war, arms, and horses."

Austria.—In 1864 the rules of the Austrian service on this point were as follows: "When the enemy is in full retreat, and permission has been given to the troops to plunder on the field of battle or in the enemy's camp, the men are to be led on by their officers fully equipped: all colours, standards, and other trophies, as well as cannon, munitions and provisions, military chest and correspondence, horses, belonging to the service are to be delivered at headquarters, the rest of the booty is to be distributed. All booty taken by the troops in actual fighting in the open country or in the field of battle, whether public or private, belongs to the troops. All money, material, provisions and other things captured from or abandoned by the enemy elsewhere than in the field of battle belong to the body of troops which brings them in. With regard to objects retaken from the enemy, questions of this instance are to be decided according to Roman law; and it depends on whether the enemy had brought the property into a place of safety or not, for in this case the original proprietor cannot demand its gratuitous return from the captor." These rules may have since been modified.

Conclusion.—To sum up, the question of booty is now one of municipal law; all the acquisitions of war belong to the State whose forces capture them, and whether that State allows its forces any reward for their exertions is a question for its own law to decide. But except in the case of property suitable for warlike purposes taken on the field of battle from the opposing forces, which, owing to its usually small value, its finders are generally allowed by their sovereign to keep, by International Law no individual soldier (nor *à fortiori* a civilian) in war has the right to appropriate to himself any property of the enemy, public or private; and the responsibility for such acts lies on the State which allows them.

THE MOST FAVOURED NATION ARTICLE.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

THE interpretation of the most favoured nation article in commercial treaties has from time to time raised most acute international questions between not only the two contracting Powers, but also between one or other of them and third Powers. This arises from the fact that the words of the article pre-suppose the existence of some hypothetical third Power intituled the "most favoured nation." The status so defined is the origin of most of the controversy, and it becomes necessary *in limine* to analyse the conditions which create the most favoured nation status.

The Most Favoured Nation Status.—The form of this treaty article varies a little in different treaties, but for the purpose of our analysis we will take the article as it is found in our treaty with Austria-Hungary of 1876. This is not a treaty based on a tariff of import duties, but simply on most favoured nation treatment. The wording of the article is as follows :—

> The produce and manufactures of, as well as all goods coming from, Austria-Hungary, which are imported into the territories and possessions of her Britannic Majesty, and the produce and manufactures of, as well as all goods coming from, British possessions, which are imported into the Austro-Hungarian monarchy, whether intended for consumption, warehousing, re-exportation, or transit, shall therein, during the continuance of this treaty, be treated in the same manner as, and in particular shall be subjected to, no higher or other duties than the produce and goods of any third country the most favoured in this respect.
>
> No other or higher duties shall be levied in the Austro-Hungarian monarchy on the exportation of any goods to the territories and possessions, including the colonies and foreign possessions of her Britannic Majesty, or in the territories and possessions, including the colonies and foreign possessions of her Britannic Majesty, on the exportation of any goods to the Austro-Hungarian monarchy, than on the exportation of the like goods to any third country the most favoured in this respect.
>
> The two high contracting parties likewise guarantee to each other treatment on the footing of the most favoured third country, in regard to the transit of goods through the territory of the one from and to the territory of the other.

It is also provided that—

> every reduction in the tariff of import and export duties, as well as every favour or immunity that one of the contracting parties grants to the subjects and commerce of a third Power, shall be participated in simultaneously and unconditionally by the other.

After the conclusion of this treaty the benefit of every variation, whether legislative or conventional, in the commercial intercourse between either of the contracting Powers and any third Power could be claimed by the other treaty Power.

Independently of all treaties, each country has full power to deal with importations from other countries on any terms it pleases—to exclude some and to favour others. The favoured nation clause is a restriction upon this power, in order to bring about equality of fiscal conditions between exporters from either treaty Power and exporters from third countries into the territories of the other treaty Power.

But if the third Power has entered into engagements with either treaty Power based on certain concessions, in consideration of which it has secured certain favours, can those favours be claimed by the other treaty Power under the most favoured nation article without the performance of the conditions? The United States have always contended that they cannot, whilst Great Britain has, since the era of Free Trade, adopted the opposite view.

The United States Interpretation.—To illustrate the American interpretation of this article we would first refer to the position taken up by the Government of the United States in dealing with a difficulty arising out of the interpretation of this very clause as far back as 1822, in connection with the treaty of 1803 for the cession by France of Louisiana to the United States. Art. 8 of that treaty was as follows:—

A l'avenir et pour toujours après l'expiration des douze années susdites les navires français seront traités sur le pied de la nation la plus favorisée dans les ports ci-dessus mentionnés.

All conditions are absent from this article. Nevertheless, conditions were claimed as of right by the United States. What the conditions were has no bearing on the principle of interpretation, upon which point alone we refer to this international dispute.

The cause of the dispute was the advantage enjoyed by Great Britain in respect of her vessels being placed upon the same footing as the vessels of the United States, whilst vessels from France were subjected to heavy tonnage duties upon entering the American ports, including those of Louisiana. The question is thus referred to in the official report of the Committee of Commerce, communicated to the House of Representatives March 15th, 1822:—

France.—The extra duties imposed in 1817 by the French Government on the produce of the United States, when imported into France in vessels of the United States, have excluded them from a competition with French vessels carrying American produce to France. Feeling the injustice of such impositions on the part of France, the merchants memorialised Congress. On consideration of their complaints, an Act was passed May 15th, 1820, subjecting French vessels entering the ports of the United States to a tonnage duty of eighteen dollars a ton after July 1st, 1820.

The facts which appear to have originated the contest may be concisely summarised thus: The United States were under obligation to treat the ships of France upon the footing of the most favoured nation in the ports of Louisiana. It is important to notice that this treaty obligation has no conditions specified. But it would appear that at that date (1820) British vessels entering the port, say, of New Orleans, were admitted on the same terms as American vessels, whilst those of France were subjected to a heavy tonnage duty. Upon the words of the treaty the French could plead their right to the same treatment as British vessels in the ports of the ceded territory. It was part of the consideration for the cession. And yet the claim was disallowed by the President of the United States, as appears from his fifth annual message of December 3rd, 1821:—

> It is my duty to state, as a cause of very great regret, that very serious differences have occurred in this negotiation, respecting the construction of Art. 8 of the treaty of 1803, by which Louisiana was ceded to the United States. The claim of the Government of France has excited not less surprise than concern, because there does not appear to be a just foundation for it in either instance. By Art. 8 of the treaty referred to, it is stipulated that, after the expiration of twelve years, during which time it was provided by Art. 7 or preceding article that the vessels of France and Spain should be admitted into the ports of the ceded territory without paying higher duties on merchandise, or tonnage on the vessels, than such as were paid by citizens of the United States, the ships of France should for ever afterwards be placed on the footing of the most favoured nation. By the obvious construction of this article, it is presumed that it was intended that no favour should be granted to any Power in those ports to which France should not be forthwith entitled, nor should any accommodation be allowed to another Power, on conditions to which she would not also be entitled on the same conditions. Under this construction no favour or accommodation could be granted to any Power to the prejudice of France. By allowing the equivalent allowed by those Powers, she would always stand in those ports on the footing of the most favoured nation. But if this article should be so construed as that France should enjoy of right, and without paying the equivalent, all the advantages of such conditions as might be allowed to other Powers in return for important concessions made by them, then the whole character of the stipulation would be changed. She would not only be placed on the footing of the most favoured nation, but on a footing held by no other nation. She would enjoy all advantages allowed to them in consideration of like advantages allowed to us, free from any and every condition whatsoever.

The dispute appears to have terminated by France concluding a treaty of commerce. In Wheaton's *Elements of International Law* this dispute is referred to in connection with the principle laid down by this jurist on the "Interpretation of Treaties":—

> Public treaties are to be interpreted like other laws and contracts. Such is the inevitable imperfection and ambiguity of all human language that the mere words alone of any writing, literally expounded, will go a very little way towards explaining its meaning.

The note in Wheaton by the editor, Mr. Lawrence, does not give the views of the President, which we have quoted, but contains the following passage from Mr. Adams's note to the French Minister. He was instructed to say—

that the vessels of France were treated in the ports of Louisiana upon the footing of the most favoured nation, and that neither the English nor any other foreign nation enjoys gratuitous advantage which was not equally enjoyed by France. But English vessels, by virtue of a conditional compact, were admitted into the ports of the United States, including those of Louisiana, upon payment of the same duties as the vessels of the United States.

The sum and substance of this episode amount to this—viz., that notwithstanding the absence of all conditions from the words of the most favoured nation article in the Louisiana treaty, yet conditions were imported into its interpretation by the United States.

The British Interpretation.—In 1884 a draft convention relative to the trade between the West Indies and the United States was settled between the Government of the United States and the British Minister at Washington. It was a convention calculated to establish on favourable terms for the West Indies the trade intercourse between those British possessions and the United States. Art. 13 was in the following words :—

The contracting parties, however, mutually agree that the conditional privileges which this convention expressly reserves and confines to the goods and vessels of the respective countries under the national flags are not, under the operation of favoured nation clauses in existing treaties which either of them may have concluded with other countries, to be deemed as extending to the goods or vessels of such other countries without equivalent consideration on the part of such other countries; and if any foreign country should claim, under existing favoured nation engagements, to share in the benefits of the commercial intercourse which this convention creates as between the United States and the several British colonies aforesaid, and should either party deem such claim to be allowable, it is hereby engaged that the party affected thereby shall have the right to denounce the present convention under Art. 12 hereof, or else that any such treaty with any foreign country, so far as it may be contrary to the terms of this convention, may be denounced and terminated so soon as the terms of such treaty may permit, in which case the alternative right of denunciation of the present convention shall not be exercised.

Art. 14 was as follows :—

Nothing in this convention shall be construed as affecting or impairing any rights of commercial intercourse between the United Kingdom of Great Britain and Ireland and the colonies aforesaid, or between any other possession of Great Britain and the said colonies, or between the said colonies themselves, which may now or hereafter exist; but it is agreed that in respect of the articles mentioned in the schedules of Art. 2 hereof the United States shall be placed on the same footing as Great Britain and her possessions.

We might summarise the whole convention, which contained seventeen articles, by stating that the object of the convention was to facilitate

commercial intercourse between the British West Indies and British Guiana on the one side and the United States of America on the other, by reciprocal remission of duties on certain scheduled articles in which remission of duties by the West Indies and British Guiana, the mother country, and all other British colonies were unconditionally to share, and also all foreign States which gave to the West Indies the equivalent of the terms conceded by the United States. The convention also placed British and American shipping engaged in the intercolonial and coasting trades on the same terms. It also provided reciprocal most favoured nation treatment between our West Indian and South American possessions on the one side and the United States on the other; and thus terminated, so far as the West Indies and British Guiana were concerned, the injurious effect of the exclusion of British colonies from most favoured nation treatment, as provided by the commercial treaty with the United States. This convention promoted free trade by reducing import duties; gave the mother country and all British colonies every advantage in the ports of the West Indies which was obtainable by the United States; and enabled any foreign country outside the convention to obtain in the West India ports the same treatment as the United States upon giving to the West Indies the concessions, or their equivalents, granted by the United States.

But our Foreign Office, in a despatch by Earl Granville to the British Minister at Washington on February 12th, 1885, raised objections that the interpretation of the most favoured nation clause involved in the United States proposals was that "concessions, granted conditionally and for a consideration, could not be claimed under it, and from that interpretation her Majesty's Government entirely and emphatically dissented";—and it was also objected that "the proposals of the United States involved an infraction of the most favoured nation clause as hitherto interpreted in the law of nations." Thus the interpretation of the most favoured nation article on the part of our Foreign Office stopped this advantageous convention.

The convention had emanated from the United States, in response to the proposals of Earl Granville for the extension to the West Indian colonies of the benefits of the most favoured nation article, from which they were excluded by our treaty of commerce with America of July 3rd, 1815.

In a despatch of May 28th, 1884, Earl Granville pointed out that "the United States enjoyed, as a matter of fact, without express stipulation in any diplomatic agreement, complete most favoured nation treatment in the West Indies," and asked that "complete most favoured nation treatment should likewise be extended in the United States to articles the growth, produce, or manufacture of the British West India colonies."

A reference to the negotiations for the treaty of 1815 will show that the American Commissioners submitted a proposal "that each nation should be placed on the footing of the most favoured nation without restricting

that privilege as relates to citizens of the United States to the commerce of his Majesty's territories in Europe." But the British Government declined to have the most favoured nation treatment extended so as to include British colonies. The treaty, therefore, expressly limited the most favoured nation treatment to British territory in Europe.

But even if Earl Granville had succeeded in obtaining what he asked in his despatch of May 28th, 1884, the West Indies would not, without tariff concessions equivalent to those obtained by America from other States, have secured for themselves the most favoured nation treatment as interpreted by Earl Granville. The American Government would have maintained their well-known interpretation, which had been so long acted upon by them. But the conditions involved in such an interpretation were no more than the West Indies could easily, and were ready to, perform.

The Distinction between the American and English Interpretation.—We have given in some detail the arguments of the American and British Governments in favour of their respective interpretations of the most favoured nation article. It will be seen how material are the consequences to international trade of the two interpretations; and one further illustration arising out of a dispute between America and Germany in 1894 will serve to summarise the diverse views on the interpretation.

In that year the German Ambassador lodged a protest against the countervailing duty imposed by the United States Government upon German sugar in respect of the bounty given by Germany on its export.

The German Ambassador alleged that "such a measure could not be reconciled with the most favoured nation clause which governed the economic relations between the two countries," but that it was "a differentiation whereby the exportation of German sugars to the United States was more unfavourably treated than that of several other European countries." The Ambassador further argued that "an export bounty was a domestic affair of Germany, and that an intent not to fulfil its treaty stipulations based upon the most favoured nation clause could not be inferred from this by any other country," and that it was "no answer to say that the discriminating duties applied to all countries in a certain category." The Ambassador urged that a bounty on export could not be regarded as a discrimination which would warrant another country, in spite of the most favoured nation article, imposing a discriminating duty. It was to be understood, said the Ambassador, that when treaties against discriminating duties were made, the Government reserved the right to favour by duties or by bounties their own domestic productions, and that the additional duty imposed by the United States Act of 1894 on bounty-aided sugars was not responsive to any measure of discrimination against produce of the United States. "It was," said the Ambassador, "an attempt to off-set a domestic favour or encouragement to a certain industry by the very means forbidden by the treaty."

The United States Government, in connection with a similar dispute as to the salt duty, referred the interpretation to the Attorney-General, who, in a letter dated November 13th, 1894, said that "the most favoured nation clauses of treaties had been invariably construed both as not forbidding any internal regulations necessary for the protection of our home industries, and as permitting commercial concessions to a country which were not gratuitous, but were in return for equivalent concessions to which no other country was entitled except upon rendering the same equivalent." The Attorney-General added that "the representatives of Great Britain and Germany at the Sugar Conference in 1888 expressly declared that the export sugar bounty of one country might be counteracted by an import sugar duty of another, without causing any discrimination which could be deemed a violation of the terms of the most favoured nation article."

Conclusion.—It will be noticed that both the German Ambassador and the Attorney-General of the United States held in common the view that notwithstanding the most favoured nation clause both treaty Powers reserved the right to favour their own domestic production "by," said the German Ambassador, "duties or by bounties"; "by any internal regulations," said the Attorney-General of the United States, "necessary for the protection of the home industries." This *consensus in idem* seems in itself to afford sufficient ground to sustain the action taken by the United States on the several occasions we have referred to. That the most favoured nation article permits either treaty Power to inflict damage upon the trade of the other treaty Power with impunity is an interpretation which, if reciprocal, would render the clause nugatory, and, if unilateral, would make the clause an impossible nexus between two Sovereign Powers negotiating a treaty of commerce on terms of equalty.

The interpretation that both treaty Powers retain their liberty, notwithstanding this article, to adopt measures necessary to protect their own subjects or citizens, gives as much effect as it seems possible to give to this treaty engagement. Such reserved power and liberty enable, if necessary, either treaty Power to accord different treatment as between the other treaty Power and third Powers; but such variation being consequent upon acts within the volition of the Power objecting, seems to be no violation of the most favoured nation engagement, on the principle of *volenti non fit injuria.*

INTERNATIONAL COMMISSION ON SENTENCES.

We have been favoured with the subjoined version of the circular about to be issued by this Commission to the General Council of the Bar, to the American Bar Association, and to leading jurists and other recognised authorities on the Continent of Europe. The French original (as revised) will be found in the *Bulletin Mensuel de la Société de Législation Comparée* for October–December, 1901, published by the Libraire du Conseil d' Etat, 24, Rue Soufflot, Paris.

I.

The International Congress of Comparative Law which met in Paris in 1900 appointed, on the motion of Mr Crackanthorpe, K.C., a Commission charged with the duty of investigating the principles which should guide the judiciary when pronouncing a criminal sentence.

The original members of the Commission were (1) Mr. Crackanthorpe, the author of the proposal; (2) M. Alfred Le Poittevin, Professor of Law in the University of Paris, nominated by the Société de Législation Comparée; (3) M. Garçon, Professor of Law in the same University, nominated by the Société Générale des Prisons; (4) M. Garraud, Professor of Law in the University of Lyons, nominated by the Union Internationale de Droit Pénal; (5) M. Albert Rivière, ex-judge, and acting General Secretary of the Société Générale des Prisons.

The Commission held its first sitting in Paris last May. It co-opted as members (6) M. Daguin, General Secretary of the Société de Législation Comparée; (7) M. Raymond Saleilles, Professor of Law in the University of Paris, and author of *L' Individualisation de la Peine.* The right of co-opting additional members, of any nationality, was reserved. M. J. Hémard, Doctor of Laws, was appointed Secretary to the Commission.

II.

In certain countries, for instance in England, the law prescribes a maximum punishment for each offence, but no minimum. The sentence is, in such cases, left almost wholly to the discretion of the judge, and this leads to striking anomalies. Similar anomalies exist, in a minor degree, in those countries where both a minimum and a maximum punishment are prescribed. In this state of things, the enquiry naturally suggests itself—Do criminal judges, when awarding punishment, act on any settled principles, and is uniformity in this respect desirable?

The Commission decided, as a preliminary step, to put itself into communication

with the judiciary, with the Bar, and with other persons known to be interested in the struggle of society against crime, with a view of ascertaining the extent (if any) to which sentences are, or should be, influenced by general conceptions of the object of punishment, or by matters bearing either on the offence itself or on the character of the individual committing it.

III.

Three distinct theories of punishment—the expiatory, the deterrent, and the reformatory—have, as is well known, been discussed for a long time by philosophers and criminologists. Each, or all of these combined, may be adopted by the judiciary. Thus, one judge may hold the main object of punishment to be that the offender should do penance for his sin; another that he should be made a public example of; a third that he should be reformed by the discipline of a gaol, and only be imprisoned for life or for a long period of years if reformation appears to be hopeless.

Again, whatever theory of punishment a judge may most incline to, he may have to subordinate it to special circumstances. For example, the frequency of an offence in a particular district or the fact that it is more dangerous there than elsewhere, may require him to give the first place to the deterrent theory, although, apart from such special circumstances, he would be disposed to assign to that theory the last place, or possibly to ignore it altogether.

Lastly, it may well be that a judge may make a distinction between individual offenders whose offences, when considered objectively, are the same. He may, for instance, attach importance

(*a*) to previous convictions, even when these do not form a statutory ground for augmenting the sentence;
(*b*) to the moral character of the offender apart from his judicial record;
(*c*) to the degree of the offender's intelligence and education;
(*d*) to the difficulties he has had to encounter in the past;
(*e*) to the extraordinary temptation by which he was surrounded at the time of the commission of his offence.

These distinctions may be further varied according as the offender is a man in the prime of life, a man far advanced in years, a woman, or a child.

IV.

Bearing in mind these considerations, the Commission, whilst welcoming any general observations you may be pleased to make, ventures to request of you a brief answer to all or any of the following questions:—

Question 1.—Does the judge, in fact, when awarding a sentence, act on any theory as to the object of punishment, such as retribution, expiation, example to others, reformation of the offender, or the like? Is it desirable that he should do so?

Question 2.—Does the judge, in fact, keep the same end in view in the case of all offences, or does he make a distinction between one offence and another? Is it desirable that he should do so?

Question 3.—When he makes a distinction between one offence and another, on what is the distinction based? On the character of the punishable act looked at from a moral standpoint? On the greater or less frequency of the crime in the district? On the greater or less risk to which it exposes the community, or on any, and what, other circumstances?

Question 4.—When he makes a distinction between one individual and another,

does the distinction turn on the offender's antecedents as shown by his judicial record, or on his degree of intelligence and education, or on any other, and what, circumstance? Is the age or sex of the offender taken into account, and if so, to what extent? Is it desirable that any, and which, of the distinctions mentioned above should be made?

Question 5.—In the absence of special circumstances, does the judge award the full penalty allowed by the law, or does his normal sentence fall short of this?

V.

When the answers to the above questions have been received, the Commission will endeavour to extract from them the guiding principles of punishment which prevail at the present time, as well as those which, in the opinion of the authorities consulted, ought to prevail. The materials thus collected cannot fail to prove useful to judges and legislators in all parts of the globe, since, like rays of light diffused from a central focus, the experience of each country will be made known to the rest.

The recommendations of the Commission will be submitted to the next International Congress of Comparative Law, and it is hoped that, in the result, a set of practical rules may be framed, worthy of being accepted and acted on by all who take part in the administration of criminal justice.

COMPARATIVE LEGISLATION AS TO HABITUAL DRUNKARDS.

[*Contributed by* R. W. Lee, Esq.]

Inebriation is a fact of which the jurist must take account. Whether in relation to criminal responsibility, or as a ground of civil disability (and specifically as a vitiating element in contract), or again as an offence against public order and morality—from each of these points of view it engages the attention of the student of law. But it is not to any of these aspects of drunkenness that it is proposed to direct attention at present. The object of this paper is to chronicle the results of recent legislation for the treatment and cure of habitual drunkards.

In this connection, as in so many others, the science of jurisprudence has lately enlarged its borders.

The last half-century has witnessed in the United States of America, in the British colonies and in Great Britain, as well as in many continental countries, a changed attitude of mind towards the inebriate, important for what it has already effected, and full of promise for the future. The resulting legislation is the subject of my enquiry, which will be concerned principally with the states of the European Continent. The laws in force in the United States of America, in the British colonies and in Great Britain itself, will be also referred to.

Drunkenness a Vice or a Disease?—What are we to do with our drunkards? That is the practical question. But we shall not solve it until we are ready with an answer to a previous enquiry: "Is the habit of inebriation a vice or a disease?" If a vice, it might be proper to punish it. If a disease, it might be possible to cure it. In the first case the drunkard is a candidate for the prison; in the second for the hospital and the asylum. The old English lawyers answered the question—if indeed it occurred to them at all—with unfaltering voice. Drunkenness was an "artificial voluntarily acquired madness"—"a great offence in itself." The drunkard was *voluntarius dæmon*—a person possessed of a devil of his own begetting. Nowadays all this is changed. We have been led by our medical guides to look upon the habit of drunkenness as a disease, and a disease that is in many cases curable. It is upon the hypothesis of its curability that modern legislation proceeds.

First Attempts at Curative Treatment: Private Institutions for

Inebriates.—The credit of having originated and urged the view that drunkenness is susceptible of treatment may be assigned to a citizen of the United States of America, Dr. Benjamin Rush, who in the year 1809 advocated the institution of special establishments for the cure of drunkards. Similar ideas were expressed in this country by Dr. R. B. Grindrod in 1839, by Dr. Forbes Winslow in 1850, and by Sir Robert Christison in 1858. Select Parliamentary Committees sat and reported upon the subject in the years 1834, 1867, 1872, and 1893.

The first practical result of the changed attitude towards drunkenness was the foundation in various countries of special institutions for the treatment of inebriates. The earliest establishment of the kind was organised in the United States of America in 1846 by Dr. J. E. Turner of Maine, moved thereto, it is said, by his desire to save a friend who had given way to inebriation. In 1852 there was a foundation of the kind in Scotland, in the Isle of Skye. A year previously the first inebriate home upon the Continent of Europe was instituted at Lintorf near Düsseldorf in Germany. This is still in existence. It was followed by many others of the same sort in Germany and Switzerland. All these establishments were of a private character, and had no power of detaining patients whom they admitted within their walls. Such power of detention could only exist as the result of legislation.

Compulsory Detention: The Massachusetts Hospital for Dipsomaniacs.—The first steps in this direction were taken in the State of New York. By enactments of 1854 and 1857 the New York State Inebriate Asylum was constituted for the reception of voluntary and involuntary patients. This asylum received persons committed by a magistrate for being frequently drunk and incapable, as well as others committed by the same authority at the instigation of relatives, whose persuasion or entreaty had failed to produce voluntary submission. Patients were also admitted upon their own application. The example thus set was followed by other States of the American Union. In Massachusetts much attention has been recently directed to the subject. An Act of 1889 (chap. 414) has resulted in the foundation of the Massachusetts Hospital for Dipsomaniacs and Inebriates at Foxborough. This Act, as amended by subsequent legislation, authorised trustees to erect a hospital for not less than two hundred patients (s. 4). They have the same powers as trustees of State lunatic hospitals to establish by-laws and regulations with suitable penalties for the internal government and economy of the institution (s. 5). By s. 6 the Court may commit to the said hospital any male person who is given to or subject to dipsomania or inebriety, whether in public or in private, provided, however, that no such person shall be committed until satisfactory evidence shall be furnished to the judge that such person is not of bad repute or of bad character apart from his habits of inebriety An appeal lies from an order of committal to the Superior Court. On such appeal,

if the appellant so requests, issues shall be framed and submitted to a jury (s. 10). S. 7 provides that "all the laws relative to the commitment of an insane person to an insane hospital shall govern the commitment of any person under this Act," with the added condition that the inebriate is entitled to a hearing, unless he waive it in writing. Once admitted, a patient may (s. 8) be detained for a period not exceeding two years from the date of his commitment. The trustees may discharge a patient conditionally. Violation of the conditions *ipso facto* avoids the permit. A patient may be finally discharged either when in the opinion of the trustees he will not continue to be subject to dipsomania or inebriety or when he will not be benefited by further treatment. By s. 17 such inmates as are able to pay for their board shall be charged for the same. If a patient escapes from the hospital, he may by chap. 474 of 1897 be arrested and returned thereto by any officer authorised to serve criminal process, or by any officer or employee of the hospital. Escape however is not punishable by process of law. This is an omission in the Statute which in the opinion of the superintendent of the hospital it is imperatively necessary to supply.

The above summary embraces the most important provisions of the laws regarding inebriates now in force in the State of Massachusetts. They furnish a unique example of legislation specifically directed to the cure of drunkenness. Particularly interesting is the section which requires the inmates to be of good character apart from the habit of inebriety and the provision that persons who will not be benefited by further treatment may be discharged. Another noticeable thing is that the hospital only provides for male inebriates. Female inebriates, apparently, may be still dealt with under the provisions of chap. 339 of 1885, which authorised compulsory internment in State lunatic hospitals.

Canada and Australasia.—Legislation similar in its main outlines to the Massachusetts Acts exists in other States of the Union, in almost all the provinces of the Dominion of Canada, and in several of the Australasian colonies. With regard to these, it will be enough to refer to Dr. Norman Kerr's valuable work on *Inebriety or Narcomania* (3rd ed., London, 1894) and to an article on "Recent Legislation on Inebriates in England and the Colonies" in the number of this journal for August, 1900.

The United Kingdom: Licensed Retreats.—In the British Isles legislation has been slow and tentative in character. A Scottish Act of 1866 (Lunacy Acts [Scotland] Amendment Act, 29 & 30 Vict., c. 51, s. 15) allowed superintendents of lunatic asylums to receive inebriates as boarders upon their own written application, but gave no power of compulsory detention. This provision, as might be expected, proved abortive. The next legislation was contained in the Habitual Drunkards Act of 1879 (42 & 43 Vict., c. 19), a measure largely due to the indefatigable efforts of the late Dr. Dalrymple, continued after his death by Dr. Cameron.

This Act inaugurated a class of institutions known as licensed retreats. The local authority—by the principal Act the justices in borough or quarter sessions, but now, under the Inebriates Act, 1898, s. 13, the borough and county councils—may grant licences to keep retreats for the reception of habitual drunkards (s. 6). Retreats are to be inspected at least twice in each year by an Inspector or Assistant Inspector of Retreats (s. 15) appointed by the Secretary of State. The original plan of the measure contained provisions for compulsory internment. These clauses however were abandoned in Committee, and the Bill as passed into law made (s. 10) a written application by the drunkard a condition precedent of his confinement. Once admitted, however, he might be detained against his will, and (s. 25) punished by legal process for wilfully neglecting or wilfully refusing to conform to the rules of the establishment.

An application for admission must be accompanied by the statutory declaration of two persons to the effect that the applicant is an habitual drunkard within the meaning of the Act. The signature of the applicant is to be attested by two justices of the peace, who are to satisfy themselves that the applicant is an habitual drunkard within the meaning of the Act. By s. 4 of the Inebriates Act of 1888 the attestation may be made by any two justices of the peace, instead of, as before, only by justices having local jurisdiction. The Inebriates Act of 1898, s. 16, substitutes one justice for two as the attesting authority.

The extreme period of detention is now fixed by the same Act at two years. By s. 17 of the principal Act the Secretary of State may from time to time make rules for the management of a retreat, and contraventions of the rules are offences against the Act, and as such punishable (ss. 25 and 28) with fine and imprisonment. By s. 12 any person admitted into a retreat may at any time be discharged by the order of a justice, upon the request in writing of the licensee of the retreat, if it shall appear to such justice to be reasonable and proper. Amongst other reasons refractory conduct might be a ground for expulsion. A patient may also be discharged by order of the Secretary of State (s. 15) or of a judge of the High Court of Justice or of a county court (s. 18).

Under this Act numerous retreats have been licensed. In theory admission is always voluntary. In practice true voluntary admission is stated to be very rare indeed. The vast majority of applicants are constrained to apply by the irresistible pressure of friends and relatives.

State Reformatories and Certified Reformatories.—The Inebriates Act of 1898 (61 & 62 Vict., c. 60), besides amending the Act of 1879 in some particulars already mentioned, marks a great advance in the direction of compulsory legislation. The Act adds to the existing "licensed homes" two fresh classes of establishment—viz., State inebriate reformatories and certified inebriate reformatories. By s. 3 the Secretary of State (and in Ireland the Lord-Lieutenant) may establish State inebriate reformatories.

These places are to be, in effect, prisons, and (s. 4) governed by the Prison Acts, subject, however, to regulations to be made by the Secretary of State. By s. 5 the Secretary of State on the application of the council of any county or borough or of any persons desirous of establishing an inebriate reformatory may certify an establishment as such, and thereupon it shall be a certified inebriate reformatory within the Act.

The Criminal from Drink and the Habitual Drunkard.—These two types of reformatory are designed to receive different classes of inmates. By s. 1 where a person is convicted on indictment of an offence punishable with imprisonment or penal servitude, if the Court is satisfied from the evidence that the offence was committed under the influence of drink, or that drunkenness was a contributing cause of the offence, and the offender admits that he is, or is found by the jury to be, a habitual drunkard, the Court may in addition to, or in substitution for, any other sentence order that he be detained for a term not exceeding three years in any State inebriate reformatory or in any certified inebriate reformatory the managers of which are willing to receive him. By s. 2 any person guilty of public drunkenness and disorderly conduct (the specific offences are scheduled in the Act), and who within the twelve months next preceding has been convicted summarily at least three times of any offences so mentioned, and who is a habitual drunkard, shall be liable upon conviction on indictment, or, if he consents to be dealt with summarily, on summary conviction, to be detained for a term not exceeding three years in any certified inebriate reformatory the managers of which are willing to receive him.

The Secretary of State is (s. 6) empowered to make regulations as to certified inebriate reformaties, and in particular (sub-s. *d*) may provide for the transfer of inmates from a State inebriate reformatory to a certified inebriate reformatory, or in special cases from a certified reformatory to a State reformatory.

Expenses of Maintenance.—SS. 8 and 9 relate to the finance of certified reformatories. The Treasury may contribute. Any county or borough council, or two or more of them in combination, may contribute, or may themselves undertake the establishment or maintenance of a reformatory. S. 11 authorises arrest without warrant in case of escape. S. 12 makes the estate of a patient liable upon an order of a county court judge (or sheriff in Scotland) for the cost of detention, provided that he has property more than sufficient to maintain his family. S. 14 permits county and borough councils to contribute also to the establishment or maintenance of licensed retreats.

Immunity of the Non-Criminal Drunkard.—These provisions indicate the high-water mark of existing legislation in this country with regard to inebriates. The compulsory internment of drunkards unconvicted of crime, though often called for, has not yet been legislatively sanctioned. Proposals

in this sense were laid before Parliament in its last session. Any legislation of the kind will probably contain some particular provisions for the maintenance during detention of pauper inebriates.

The Working of the System: The Girgenti Home.—As to the practical results of recent legislation in this country, it is too early to express an opinion. The last two years have been years of active organisation. The London County Council has recently opened a certified reformatory for female inebriates at Farmfield, in Surrey. Another institution of the kind which, owing to the courtesy of Dr. John Carswell, and of Mr. Johnstone, Town Clerk of the City of Glasgow, I recently had an opportunity of seeing, is the Girgenti Inebriate Home instituted by the Glasgow Corporation in January of the present year. Nothing could be less like a prison than this establishment. It is a spacious country house with fifty-five acres of ground charmingly situated in Ayrshire. The superintendent, Mr. King, and his wife do everything that is possible for the physical and moral well-being of the inmates. The Girgenti Home is certified for inebriates of both sexes, but hitherto females alone have been committed—all of them for the extreme period of three years.

State inebriate reformatories have been tardily established in Scotland at Perth, in England at Aylesbury.

Foreign Countries: The Progress of Coercion.—It is now full time to pass to the legislation of foreign countries in Europe. Amongst these the honour of priority in grappling with inebriation must be assigned to Germany and Switzerland. The establishment of the asylum of Lintorf has been already mentioned. This was followed by that of Pilgerhütte, in the Canton of Bâle, in 1865. In the decade beginning with 1880 scarcely a year passed without the foundation of an inebriate asylum in one or other of these countries. All of these had certain features in common. Notably they were all due to private initiative and based upon the voluntary principle alone. There was no power of compulsory detention, unless it were in the case of minors and persons interdicted as prodigals. With this exception everything was voluntary, and special legislation did not exist. Within the last ten years however legislation has been carried through both in Switzerland and in the German Empire.

Switzerland.—In 1891 the Council of the Canton of St. Gall promulgated a law which enacts as follows:—S. 1: Persons who habitually give themselves to drink may be placed in an asylum of treatment for drinkers. S. 2: The duration of internment shall be, as a rule, from nine to eighteen months. In case of relapse the period may be prolonged. S. 3: Confinement in the asylum shall take place either (*a*) in consequence of a voluntary demand, or (*b*) by order of the communal council of the commune of domicile. S. 5: Internment in an asylum for drinkers can only be ordered upon a medical certificate stating that drunkenness exists and that internment is necessary to effect a cure. S. 7: The property

of the patient is chargeable with the expenses of his treatment. If he is indigent and his family cannot help, the expense falls upon the poor law administration. If necessary, the State shall contribute, and in exceptional cases may provide for the family of the drunkard during his detention.

The above are the most important provisions of the legislation of the Canton of St. Gall. Recently other cantons have entertained similar projects.

Germany.—In the German Empire a comprehensive measure providing, *inter alia*, for the compulsory confinement of inebriates passed through the Bundesrath in the autumn of 1891, but suffered shipwreck in the Reichstag in the following session. The efforts of the German temperance societies to revive it have hitherto proved unavailing. S. 11 of the draft law has, however, been in part incorporated in s. 6 of the Civil Code which came into force on January 1st, 1900. This section provides that whoever in consequence of addiction to drink is unable to attend to his affairs or exposes himself or his family to indigence, or who endangers the safety of others, may be interdicted. By s. 1896 the person so interdicted receives a guardian. The Civil Code does not follow the Bill of 1891 in expressly providing that the guardian may, with the approval of the Court, confine the ward in an asylum. It is suggested, however, that such authority may be inferred from the general legal relation of guardian and ward. The point has not yet been decided, but it is considered by competent lawyers in Germany to be too plain for argument. If this is so, we may take it that the law of the German Empire now admits of the compulsory confinement of habitual inebriates, but only in consequence of interdiction. In Switzerland interdiction is not a condition precedent of compulsory treatment. Neither in that country nor in Germany are there any inebriate homes maintained by the State, though in Switzerland the private institutions already referred to receive from the State encouragement and financial support. In Germany the establishment of such institutions is a matter for the Legislatures of the several States.

Scandinavia.—The next countries to be noticed are Norway and Sweden. In both of these the Legislature has associated drunkards with rogues and vagabonds. The law of inebriates is therefore intimately connected with that relating to vagrants and mendicants.

In Sweden, by the Vagrancy Law of June 12th, 1885, such persons may be detained in public workhouses for a period of from one month to three years. In these establishments, which are essentially intended for vagrants, no criminals are detained, and it is the administrative functionaries, not the law courts, with whom the power to direct such confinement resides. Apart from the above provision, there is no special legislation with regard to inebriates. No system of interdiction exists in the case of habitual drunkards not being lunatic, and there is no public institution for their detention and

reformation. There are some small private institutions for this purpose, but nobody can be detained there without his own consent.

In Norway legislation has until recently been of the same limited character. But a great step in advance will have been taken so soon as two Statutes of last year come into force. The first of these is the law of May 31st, 1900, relating to Vagrancy, Mendicancy, and Intoxication, which enacts (s. 18) that a person who has been thrice within the year convicted of public drunkenness, and thereupon sentenced to imprisonment, may be ordered to be detained in a workhouse or sanatorium approved by the King for the period necessary for his cure, not exceeding eighteen months, or, in case of relapse, three years. The imprisonment may be entirely or partly remitted. The expenses of treatment may be recovered from the patient.

By s. 19 a person who, by reason of drunkenness,

(*a*) Lives by beggary, or

(*b*) Becomes chargeable to the poor law, or

(*c*) Does not provide for his family,

is punishable with imprisonment. If found to be an habitual drunkard, he may be dealt with according to the provisions of s. 18. S. 21 sanctions the compulsory detention of voluntary patients for a period not exceeding two years.

The above Statute will not be brought into force until new workhouses for vagrants have been erected. With regard to these, the Law of Prisons and of Forced Labour of even date provides that the State shall erect a special establishment for men addicted to drunkenness and requiring treatment.

The case of inebriates not convicted of offences, and not necessarily falling within the provisions of the Vagrancy Law, is met by the Law of Guardianship of November 28th, 1898, which allows the Court to order compulsory detention in a licensed home for a term not exceeding one year. Interdiction upon grounds similar to those set forth in the German Civil Code is a condition precedent of such compulsory internment.

Upon the whole, Norwegian legislation as projected will be very similar to the legislation at present in force in this country, with the addition that compulsory detention of non-criminal inebriates may be ordered in consequence of interdiction.

Holland.—The law of Holland may be next cited on account of its general resemblance to that of Sweden and Norway. When the same person is convicted more than twice in the year of drunkenness in a public street, the Court may, in addition to the ordinary punishment (usually pecuniary), order detention in a public workhouse for a period of from three months to one year. These workhouses are designed for the detention of drunkards, vagabonds, and beggars. They have no specially therapeutical character. Public institutions for the reformation of drunkards do not exist. There are some private establishments, but no one can be detained in them without his consent.

The remaining countries of Europe may be passed over more rapidly. Much has been spoken and written in many of them, little done.

France.—In France there is no legislation authorising the compulsory detention of habitual inebriates, and such institutions as exist are therefore of a purely voluntary character. Recently a special building for dipsomaniacs was erected in connection with the asylum of Ville-Evrard in the Department of the Seine. But this institution presents little analogy to the "homes" and "retreats" of other countries. It is a State institution, with provision for as many as five hundred inmates. All the inmates are insane, are detained as insane, and, their mental balance once restored, must be immediately discharged. In France, drunkenness in itself, whatever the excesses that may attend it, is no ground of interdiction. In the general poverty of French legislation in regard to drunkenness one enactment of recent date may be mentioned. It is the Law for the Protection of Children of July 24th, 1889, which deprives habitual inebriates of their *patria potestas*. Dr. Legrain characterises this measure as one of the noblest triumphs of modern jurisprudence.

Austria.—In Austria, as in France, the serious overcrowding of the lunatic asylums with dipsomaniacs compelled attention to the question of special treatment for inebriates. The matter was taken up by the Government. In the early 'nineties legislation was proposed, but afterwards abandoned in consequence of an adverse report from the Sanitary Commission. Simultaneously a scheme was set on foot for the erection of a public inebriate asylum. The Provincial Diet of Lower Austria voted for the purpose a sum of 100,000 florins. But with the abandonment of the proposed law the building scheme also fell to the ground. The projected institution would have been merely a specialised lunatic asylum. Receiving only the most desperate cases of alcoholism, it could not have been expected to yield satisfactory results in respect of cures. Medical experts in Vienna continue to call for legislative provisions for the detention of inebriates as the fundamental condition of the solution of the whole question of inebriation.

Russia and Finland.—In Russia nothing has yet been done in the way of special legislation for inebriates. Professor Yesipov writes that the inadequacy for modern times of existing legislation has attracted the serious attention of jurists and physicians. The same absence of compulsory legislation characterises the law of Finland.

Italy.—The Italian Penal Code contains a provision (s. 48) that in case of habitual drunkenness a prisoner may be ordered to serve his time in a special establishment. In spite of this clause there exist in Italy at present no particular institutions public, or private, for the detention or reformation of drunkards. The Italian Civil Code does not admit drunkenness in itself to be a ground either of interdiction or disability.

Denmark and Belgium.—There is no special legislation with regard to inebriates in these countries.

Retrospect: Uniformity in the Stages of Curative Treatment.—I have now passed in review the legislation of all the countries of Europe with regard to which information has reached me. A summary may be attempted of the results of the enquiry. In considering the attitude of legislators towards inebriates it is useful to remark that the question of curative treatment has presented in different times and countries different phases. These phases resemble the strata of the earth's crust—they are not uniformly present in every country, but the order of sequence is invariable. They are reflected also in the character of the institutions to which they give rise.

(i) In the first stage no legislative provision exists for the treatment of inebriation. Hospitals and asylums exist, but with no compulsory powers. The patient enters when he will, and departs when he will. His relatives cannot call for, and the Courts cannot order, his detention.

(ii) In the second stage admission is voluntary, but once admitted, the patient must stop for the full period for which he has signed himself in. The hospitals of this period are private institutions, but under State control.

(iii) In the third stage the confinement of the inebriate is enforced by the Courts, but only in the case of persons convicted of crimes of or due to drunkenness.

(iv) In the fourth and last stage there is no such limitation. Habitual drunkards may be confined at the instance of their relatives or of the administrative authorities.

Applying this classification to the countries of Europe, we find that most of them must be referred to the first stage—the stage of legislative indifference. France, Austria, and Russia may be cited as examples. The same may be said of Sweden and Holland, for though the legislation of these countries allows of the confinement of drunkards, they are confined, not as drunkards, but as vagabonds, and with no particular hope or design of curing them.

The second stage—of permissive entrance and compulsory detention—is represented by the English Act of 1879. A provision to the same effect is contained in the Norwegian Act of 1900.

The third stage—of compulsory detention of persons convicted of crimes of or due to drunkenness—is reflected in the English Act of 1898 and the Norwegian Act of last year.

The fourth and last stage—of compulsory internment of persons given to or subject to dipsomania or inebriety, whether in public or in private—is represented in Europe by the unique example of a Swiss canton. In Norway indeed, by virtue of the law of guardianship of 1898, and in the German Empire, in accordance with the provisions of the Civil Code, the power of procuring compulsory detention would seem to accrue to

the guardian of an interdicted person in consequence of interdiction. But the necessity of interdiction as a condition tends to complication, and the jural consequences produced by interdiction on the ground of inebriety are as yet not accurately ascertained and defined. Legislation in these countries with regard to the constitution, maintenance, and management of inebriate homes is still to seek.

Legislation Still Experimental.—Upon a general view of the whole subject it appears that if the notion that habitual drunkards can be treated and sometimes cured is not a new one, the idea of invoking legislative assistance is upon the Continent of Europe of very recent origin. One Swiss canton has reached the extreme limits of legislative possibility, at any rate as regards non-criminal inebriates. Germany seems to have reached, or to be about to reach, the same result by a different road. The same may be said of Norway; but here, as in England, there exists also express legislation with regard both to criminal inebriates and to voluntary patients. The other countries of Europe have their legislative experiences still in front of them.

With the medical aspects of the question I am not concerned. I have endeavoured to present the subject from the point of view of the lawyer, not of the physician or of the social reformer. It is from these that the lawyer and the legislator will seek guidance in the difficult and important matter of the classification of inebriates and in the tabulation of the results of treatment.

In conclusion I must express my cordial acknowledgments to the many eminent foreign jurists and others who have assisted me in my enquiries as well as to those who have no less kindly put me in communication with them.

THE *PARDA NASHIN* WOMAN AND HER PROTECTION BY BRITISH COURTS OF JUSTICE.

[*Contributed by* Sir William Rattigan, M.P.]

In a previous article I have attempted to show the influence of English jurisprudence and legislation upon the native laws of India. But the limitations of space which are necessarily imposed on a magazine writer did not permit of my dealing with the subject with any degree of fulness. By the kind courtesy of the Editors of this journal I am now enabled to show how the same influence to which I previously referred has been exercised in favour of the *pardi nashin* woman of India (*i.e.*, one who sits behind the screen or *parda*), who has become the special object of protection of all British Courts.

Women's Rights in India.—It has been said by a learned native writer that "the early legislators (meaning the Hindu) *ignored* the rights of woman, and excluded them altogether from inheritance."[1] But a close examination of the works of the ancient Hindu lawyers scarcely confirms this statement. On the contrary, it would seem that the earliest Hindu law-givers distinctly conceded certain rights of property to the weaker sex, and that in some respects, at all events, the position of women was distinguished by larger freedom and independence in ancient than in modern India. "Narrow and difficult to find," says Baudhâyana, one of the ancient sages, "is the path of the sacred law, towards which many gates lead" (i. 1, 12). All who have had occasion to consult the Hindu law have experienced this difficulty. But upon the point now before us there is no lack of authority. We may commence with Gautuma, who is regarded by Sanscrit scholars as the oldest of the Dharmasûtra sages. We find that according to the best intrepretation of his text he distinctly recognises the right of a widow to succeed to a share of the estate of a sonless husband (xxviii. 21), and he also affirms the existence of woman's separate property (*ibid.* 24). Mr. Rajkumar Sawadhikari, the writer above alluded to, thinks that the inclusion of the widow by Gautuma in a barren enumeration of heirs, coming after the priest and pupil, was not meant

[1] Rajkumar Sawadhikari, in *Tagore Law Lectures* for 1880, p. 276.

to serve any practical purpose. But one of the oldest and most accepted commentators, Haradatta, does not consider that the widow was meant to come *after* the *sagotras* and the rest, but that she shared *with* them. And the *Mitarshara* (ii. 1, 6) quotes a text from Vriddha (or *old*) Manu, who probably belonged to the Manava school of the Black Yajurveda, which ordains that "the widow of a childless man, keeping unsullied her husband's bed, shall present his funeral oblations and obtain (his) entire share." Baudhâyana (ii. 3, 46) and Apastamba[1] (ii. 14, 2), both later than Gautuma, seem to consider women unfit to inherit, although the latter (Apastamba) expressly recognises the right of a daughter, on failure of sons, *sapindas*, the spiritual teacher and his disciple, to succeed to her father's estate. Sankha, who is older than the Code of Manu, on the other hand, places the mother and eldest wife before the kinsman, pupil, or fellow student (*Mitarshara*, ii. 1, 7), and declares in another text that "the influence of the female is great" (Colebrooke's *Digest*, bk. iv. ch. i. 21). Apastamba, moreover, recognises a sort of *communauté légale* between husband and wife in respect of their joint property (ii. 14, 16 and ii. 29, 3), and he permits the wife during the husband's absence to regulate the expenditure (ii. 14, 18). Again, it is Gautuma who recognises the right of a marriageable daughter, after three monthly periods have elapsed, to unite herself, of her own will, to a blameless man, if her father (or proper guardian?) has neglected to arrange for a suitable husband, provided she surrenders any ornaments received by her from her father (or her family), a permission which has long since become a dead letter, and quite opposed to modern usage. Indeed, even in the time of Vasishta and Manu the permission had become curtailed and was coupled with the condition that the daughter must wait *three years* after reaching the age of puberty before she claims to assert her right (Vasis. xvii. 67–68, and Manu ix. 90). In later law-books, the *svayamrava*, or self-choosing, is confined to the lower castes, while Gautuma permits it generally. Gautuma, it is true, says that a "wife is not independent with respect to (the fulfilment of) the sacred law" (xviii. 1), a text which primarily refers to the inability of wives to offer on their own account *Srauta* or *Grihya* sacrifices, or to perform vows and religious ceremonies prescribed in the *Purânas*, without the permission of their husbands. But there is nothing in his chapter dealing with women which corresponds with the more sweeping denunciations contained in the *sutras* of Vasishta (v. 2) and Baudhâyana (ii 3, 45), that women are never fit for independence. "Their fathers," it is there said, "protect them in childhood, their husbands protect them in youth, and their sons protect them in age." But here, again, the protection is obviously intended to be

[1] In par. 9 of the same *Khanda* Apastamba refers to the opinion of some who limit the wife's share to her ornaments and such wealth as she may have received from her relations, which shows that Apastamba's views were not universally accepted even in his own day.

afforded to make up for the physical weakness of the sex, and to guard them against personal violence. It is rather a duty imposed on fathers, husbands, and sons than a disqualification or incapacity imposed on women. It is only when we arrive at the age when Manu's Code was compiled (according to Dr. Burnell it was composed about 500 A.D.[1]) that we find the doctrine further amplified until it culminates in a text which declares that "no act is to be done according to (her) own will by a young girl, a young woman, or even by an old woman, though in (their own) houses" (Manu v. 47). On the other hand, in the hymns of the *Rig Veda* we seem to have some evidence that even at that early period Hindu women were permitted to earn an honest independent livelioood.[2] These authorities are sufficient to show that woman's rights have by no means been ignored by the earliest Hindu law-givers. Indeed, it is questionable whether her general position and status have been much improved by the later ones.

The Roman and Modern European Systems.—In other systems of law, such as the Roman and the modern European systems, the process of development has been more markedly the reverse, and the tendency has been to elevate the status of women, freeing them from the disabilities and lifelong tutelage of earlier laws, originally imposed upon them *propter animi levitatem.* It was thus not until the reign of Justinian that the tutelage of women after attaining puberty may claim to have become wholly obsolete in the Roman Empire; it was not wholly so in the time of Gaius. But the object of the ancient law was not to encroach upon the liberty of adult women, but rather to guard them against imposition, to which their want of firmness of character too easily exposed them (Gaius i. 144). It was the like reason which induced Justinian to extend the prohibition enacted by the *lex Julia* against the mortgage by a husband of his wife's immovables in Italy, even with her consent, to immovables in the provinces, *ne sexus muliebris fragilitas in perniciem substantiæ earum converteretur* (Pr. i. 2, 8). The same consideration has probably in all countries (notably in France, under the provisions of the Code Civil) introduced those differences between the legal status of woman and that of man which is to be observed in the history of past legislation. At all events, it has been claimed by the male legislators to have been the underlying motive, even when entrusting the husband with a power of disposition over his wife's property. They profess to have been acting in the interests of the wife, who required the strong arm and energy of the husband to protect her, not only in respect to her person, but to her property as well.

But it has been also claimed by Sir William Blackstone on behalf of the English law that it has treated married women with special tenderness,

[1] L. V. Schroeder in *Indiens Literatur und Cultur* (p. 744) thinks that it was probably composed in the fourth or fifth century of our era, but that no more definite date can be fixed.

[2] *Vide* Aurel Mayr's *Das Indische Erbrecht,* p. 162.

which I fear would not be generally admitted by advocates of women's rights, and it is certainly an assertion which it is difficult to support with reference to the condition of women during the feudal period. But it is true that English Equity Courts have shown a certain tenderness in securing women the full enjoyment of their property and in affording them relief against imposition or undue influence. An indulgent eye was always ready to view the acts and contracts of persons who were of weak understandings and who were not able to protect their own rights and interests as specially calling for the interposition of such Courts; and if there was anything in the nature of the act or contract which could justify the conclusion that the party had not exercised a deliberate judgment, but had been imposed upon, circumvented, or overcome by cunning or artifice, or undue influence, Courts of Equity were prompt to grant relief (*Gartside* v. *Isherwood*, 1 Bro. Ch. App. 560–561). It is true that one eminent judge (Sir Joseph Jekyll) once observed that in the absence of fraud or breach of trust a Court of Equity would not measure the size of people's understandings or capacities, there being no such thing as an equitable incapacity where there is a legal capacity (*Osmond* v. *Fitzroy*, 3 P. Will. 129–130). But on the other hand, a Court of Equity will enquire whether the parties to a contract really did meet on equal terms, and where it is not satisfied on this score it will more readily give weight to any suspicious circumstance attending the transaction (*Wood* v. *Abrey*, 3 Mad. at p. 423). For in order to bind parties it must appear that there has been on the part of both a free and deliberate consent, which implies that they have been able to exercise, deliberately and freely, a physical and moral power in the guidance of their wills. Subject to these limitations the law as applied by Courts in England will, nevertheless, not assist a person who is capable of taking care of his or her own interest, except in cases where he or she has been imposed upon by deceit, against which ordinary prudence could afford no protection. As observed by Lord Wynford in *Blackford* v. *Christian*, 1 Knapp 77, "if a person of ordinary understanding, on whom no fraud has been practised, makes an imprudent bargain, no Court of Justice can release him from it."

British Courts and the Contracts of the "Parda Nashin" Woman.—No. where, however, have British Courts shown a greater readiness to extend their protection than in dealing with contracts entered into by *parda nashin* women in India. Nowhere has the principle of requiring "equality between the contracting parties" been more rigidly enforced than in such cases. And this is all the more remarkable because in neither the Hindu *Shastras* nor in the Muhammadan *Shara* is there anything which can be adduced to support the doctrine which has been evolved by our Courts.

We have seen, indeed, that there are certain texts in the later Hindu law-books which inculcate the general subordination of women, who were known as *abalás*, or weak beings, but these have reference rather to their social than to their strictly legal status. To their husbands they

are no doubt bound to render the most absolute obedience, but that is not a provision peculiar to the Hindu law, for, as we read in *Don Quixote*, "to this burden women are born, they must obey their husbands if they are ever such blockheads." As regards their contractual capacity the *Shastras* do not impose any disqualification. On the contrary, Yajnyawalkya, (ii. 46, 49), Narada (i. 18), Vishnu (vi. 31, 38), concur in holding that a wife is bound to pay the debts contracted by her, which is a clear recognition of her power to contract. And in enumerating the persons who are incompetent to contract Yajnyawalkya omits women, but mentions "a person intoxicated or insane or grievously disordered or disabled, an infant, a man agitated with fear or the like, or a person acting without authority" (ii. 32). Gautuma and Manu are to the same effect (Colebooke's *Digest*, bk. ii. ch. iv. 57, 66; and see *Nathubal Bhailal* v. *Javher Raiji* [1876], I.L.R. 1 Bom. 121). The Mohammedan law in like manner fully recognises the contractual capacity of a sane woman *sui juris* (Amir Ali's *Mohammedan Law*, vol. ii. pp. 17 and 23, 2nd ed.), and so does the Indian Contract Act (s. 11).

It was due, therefore, to that tenderness towards the weaker sex to which Sir William Blackstone refers as characteristic of our law, that the doctrine that those who rely upon deeds and powers executed by *parda nashin* ladies in India must satisfy the Court that they have been explained to and understood by those who executed them, owes its present almost unassailable position. An examination of the case law on this point will clearly indicate that the doctrine was originally evolved in India by our Courts, partly with reference to what was deemed to be the practice of Equity Courts in England, and partly with reference to an assumed incapacity of a Hindu woman under her own personal law; and it will thus afford another and striking illustration of how much farther our Courts have gone in affording relief to different sections of our Indian fellow-subjects than they would have been entitled to under a stricter administration of their own personal laws, and, one is almost tempted to add, with reference to the particular doctrine we are now discussing, than their English sisters would be likely to obtain at the hands of any Court of Justice in this country.

Cases of Confidential Relationship.—It is to be noticed that in many of the cases which will be referred to presently, the person who sought to hold the *parda nashin* lady to the terms of her deed was one who stood towards her in a fiduciary character, or in some relation of personal confidence; and of course, where such was the case, the onus of proof of the fairness of the transaction clearly lay on the person who sought to enforce the deed in his favour, and it was incumbent upon him to show that the lady thoroughly knew and understood what she was doing, and that no fraud or imposition was practised upon her. Of this class were the following cases, reported in the earlier volumes of the *Calcutta Weekly Reporter*—namely, *Ranee*

Usmut Koowar v. *W. Tayler* (1865), 2 W.R. 307 (see p. 314) and 4 W.R. 86 (in review), in which Mr. Tayler, who acted as the Ranee's attorney, claimed to recover a sum of 29,773 rupees for fees on the basis of a bond executed by the Ranee; and *Soondur Koomaree Debia and Others* v. *Kishori Lall Sein* (1866), 5 W.R. 246, where a Hindu woman signed a deed giving away her whole property, which was considerable, to a person who had attended her as a physician. In the case last mentioned Macpherson J. pointed out that the deed was executed by the lady at a time "when she had not a single friend or adviser of her own near her, and when she was surrounded by the friends of the plaintiff; there was nothing to show that the consequences of what she was doing were ever placed before her mind, or that she in fact at all considered what she was about." Under these circumstances it was not surprising that the deed was held to be of a kind that could not be supported by a Court of Equity. *Ram Pershad Misser* v. *Ranee Phulputee* (1867), 7 W.R. 98, was another case of the same description. Here a *muktear*, or law agent, employed by the Ranee to conduct certain suits on her behalf sued her upon a document bearing her seal and purporting to convey valuable properties to the *muktear* without any substantial consideration. The same learned judge who decided the case of Soondur Koomaree Debia held that under the circumstances, the Ranee being a *parda nashin*, the plaintiff "was bound to show, beyond all doubt, that the Ranee knew accurately what she was about, and that she was acting advisedly and after consultation with those best able to advise her," a decision which at once commands our unqualified approval.

Presumption of Undue Influence.—But in the same year (1867) the far broader doctrine in favour of *parda nashin* women was, apparently for the first time, enunciated by the Calcutta High Court in the case of *Kanye Lall Juhoree* v. *Kaminee Dabee*, reported by the *Englishman* newspaper of March 28th, 1867. In this case it was laid down that—

> A Hindu *purdah* woman is entitled to receive in this Court that protection which the Court of Chancery in England always extends to the weak, ignorant, and infirm, and as to those who, for any other reason, are specially likely to be imposed upon by the exertion of undue influence over them. *The undue influence is presumed to have been exerted unless the contrary be shown.* It is, therefore, *in all dealings with those persons who are so situated, always incumbent on the person who is interested in upholding the transaction* to show that its terms are *fair* and *equitable.* The most usual mode of discharging the onus is to show that the lady had good independent advice in the matter, and acted therein at arms' length from the contracting party.

This decision provokes criticism on more than one point debated in it. In the first place, it seems to put the Hindu *parda* woman on a pedestal by herself, whereas there is no reason why a Muhammadan, a Maharatta, or a Sikh *parda* lady should not be treated in the same way and afforded

the same protection if she is entitled to it. In the next place, it does not necessarily follow that a native woman, simply because she sits behind the *parda*, is to be placed in the same category as the "weak, ignorant, and infirm persons" whom the Court of Chancery, under a proper interpretation of its approved practice, is accustomed to protect. On the contrary, it is common experience to find in India *parda* ladies who are highly intelligent, strong-minded, and who possess excellent business capacity, and contrive to manage large estates with great success. To adopt a sweeping generalisation and to hold that every *parda nashin* lady who enters into any commercial transaction, or who makes a disposition of her property is presumably the victim of "undue influence," is to make an assumption which is contrary to actual facts, and to cause the law to be abused for the purpose of avoiding *bonâ fide* engagements. It may be that *parda* ladies, like women elsewhere, are open to external influences which may affect their action; but the law does not pretend to exclude influence; on the contrary, it recognises influence, unless "unduly" exercised, as natural and right. Indeed, for the matter of that, few men, if any, as Kekewich J. well observed in *Allcard* v. *Skinner* (1887), 36 Ch. D. at p. 157, "are gifted with characters enabling them to act, or even think, with complete independence of others, which could not largely exist without destroying the foundations of society."

The Calcutta Court, again, seems to take a very loose and unsatisfactory view of the doctrine relating to "undue influence," which is scarcely to be supported by the decisions of English Equity Courts. Thus in the case of *Allcard* v. *Skinner*, just cited, which may be regarded as one of the leading authorities on the subject, Lord Justice Lindley in one of his masterly judgments groups the case law into two classes: one in which there has been some unfair and improper conduct, some coercion from outside, some over-reaching, some form of cheating, and generally, though not always, some personal advantage obtained by a donee placed in some close and confidential relation to the donor; and the other in which the position of the donor to the donee has been such that it has been the duty of the donee to advise the donor, or even to manage his property for him. In such cases the Court throws upon the donee the burden of proving that he has not abused his position, and of proving that the gift made to him has not been brought about by any undue influence on his part (*vide* p. 181 of judgment in appeal). But it is one thing to say, when circumstances of the above kind are shown to exist, that the onus is cast on the party who seeks to derive benefit from the disputed transaction, and a totally different thing to hold that a *parda nashin* woman must be *presumed* to have had undue influence exerted against her in every transaction to which she has been a party. No doubt, as Lord Kingsdown very clearly points out in *Smith* v. *Kay* (7 H.L.C. 750, at pp. 778–9), the principle on which Courts of Equity give relief

is not confined to cases where there has been an abuse of a strictly fiduciary character: it applies to all cases where influence is acquired and abused, where confidence is reposed and betrayed. But the difference is this: that while in the former class of cases, where a fiduciary relation exists, the Court will presume confidence put and exerted, in the other class, where no such relation exists, the Court will require the confidence and influence to be proved intrinsically, a distinction which the High Court does not appear to have kept in view.

The Calcutta Decision Followed in Madras.—Unsatisfactory, however, as the Calcutta decision must be regarded, it was cited with approval and followed in a later case—*Roop Narain Singh* v. *Gugadhar Pershad Narain* (1868), 9 W.R. 297. After quoting the passage of the judgment in *Kanye Lall Juhore's* case, which has just been commented upon, the learned judges proceed to say:—

> Here, in the case before us, the defendants, or their predecessors in title, dealt in regard to the purchase of the *mehals* which are the subject of suit with a *pardah-nasheen*, and they also at the same time stood in the position of accounting parties to the person whom the lady represented, relative to the rents and profits derived by them from the same *mehals*. There are, therefore, *for a double reason*, under the obligation to show that their respective purchase transactions were fair and equitable.

Here, again, the Court throws its protecting arm round the *parda nashin*, and, quite regardless of her business or intellectual capacity, or of her having given a deliberate consent to the transactions impeached, holds that the opposite party must satisfy the Court that the sales to him were "fair and equitable."

In Madras the same question was considered at a very early period of our administration, and in the case of *Latchemy Umma* v. *Lewcock*, 1 Strange's *Notes of Cases* 30, which was brought in the Recorder's Court in the year 1800, the learned Recorder pointed out that a Hindu lady had been induced to accept an account tendered by her agent, who exclusively managed her affairs, in the absence of all her natural friends, in which exorbitant sums for professional services had been included, and in granting her relief he based his judgment on the ground that as native women were "scarcely *sui juris*," they were entitled to be protected against their acts. In a subsequent case which was tried in the Supreme Court of Madras in 1812, the brother of a Hindu widow who lived with her and was her natural protector, assuming the management of all her affairs, had obtained an endorsement from her of a company's promissory note, and the question was whether this endorsement was binding upon her, or whether the Court could examine into the circumstances which led up to the endorsement. The Court, in deciding in favour of the widow, made the following observations:—

> The case of a Hindu woman passing property was not an ordinary one. It

was one to which it behoved the Court to look always with the greatest circumspection, to see that no advantage had been taken of her general incompetency. A Hindu woman could scarcely be considered as *sui juris*, and a Court administering Hindu law must, to do justice, often interpose between her and her acts, as Courts of Equity did at home in all cases between persons standing together in certain specified relations, giving to the one a presumed advantage over the other.

The judgment then proceeds :—

It might almost be laid down as a principle, that the act of a native woman parting with her property, unless in the ordinary course of expenditure, would be considerered as one about which the Court would always require to be satisfied by something more than the mere evidence of its having been performed, however strong (*Chillummul* [a widow] v. *George Garrow*, 2 Strange's *Notes of Cases*, at p. 159).

A similar ruling was given by the same Court in *Narsammal* v. *Luctchmana Naie* (1809), 2 Strange's *Notes of Cases* 14, at pp. 16, 17, and 22. That was a bill for an account on the part of a Hindu widow, which was met by the plea that an account had been previously settled, and a discharge in the nature of a release given. The question therefore arose whether the plaintiff could go behind the discharge and reopen the account, which it was alleged had been explained to her before she signed the release. The Court held she could, on the ground that as a native woman she was under the special protection of the Court, and could not be deemed sufficiently *sui juris* to be bound by her personal acts *where there was the slightest reason to apprehend that an advantage had been taken of her*. "It is doing nothing," said the learned Chief Justice, "for a party accountable to her to produce and rest upon her signature. *If she makes out anything of a case*, he must be able to satisfy the Court that it ought to be binding upon her, by showing that her complaint of its inefficacy is without foundation." To the defendant's objection that no incompetency on the part of the widow-plaintiff has been urged in the bill, the Chief Justice replied that—

The Court must take notice that Hindu women are, comparatively speaking, incompetent. Their own law, from a sense of their incompetency, has declared their condition to be that of perpetual dependence. "A woman," says Manu (ix. 3), "is never fit for independence," and upon the same principle, not Manu only, but texts from other native authorities to be found in the *Digest*, record the severest denunciations against "such kinsmen as by any pretence appropriate the fortunes of women during their lives." Manu (*loc. cit.*) and Vrihaspati (3 *Digest* 489, 8vo ed.) concur in saying, "A just king must punish them with a severity due to thieves."

It will be observed that in each of the Madras cases the circumstances were such as to bring it within the rule of equity already explained, *i.e.* where there has been an abuse of a fiduciary character, and upon that ground the decisions could no doubt be well justified. But in representing the Hindu *parda nashin* woman as "scarcely *sui juris*" under her own law, and therefore

entitled to special protection, the Court assumed a position for her which the Hindu law cannot, I think, be rightly said to warrant. As already pointed out, a Hindu woman who has reached her majority is fully competent to contract, so as to bind herself and her separate property, and the text relied upon from Manu to show that she is not fit for independence has reference more to social dependence upon the male members of her family than to any want of legal capacity, which other texts fully assure to her. Besides, if this were the ground to be taken for placing native women under the special protection of our Courts of Justice, it would have no application to Muhammadan or Sikh women, which would be scarcely fair treatment to the latter.

The Mussulman Woman and the Hindu.—A distinction of this kind was urged in a case which came up to the Privy Council in 1867, but their lordships had no hesitation in refusing to recognise it, while conceding that the Muhammadan law was even more favourable than the Hindu law to women and their rights.

> In India (observed their lordships) the Mussulman woman of rank, like the Hindu, is shut up in the *zenanah*, and has no communication, except from behind the *purdah*, or screen, with any male persons, save a few privileged relatives or dependents; the culture of the one is not, generally speaking, higher than that of the other, and they may be taken to be equally liable to the pressure and influence which a husband may be presumed to be likely to exercise over a wife living in such a state of seclusion. Their lordships must, therefore, hold that this lady (a Mohammedan) is entitled to the protection which, according to the authorities, the law gives to a *purdah-nashin*, and *that the burden of proving the reality and* bonâ fides *of the purchases pleaded by her husband was properly thrown on him* (*Moonshi Buzloor Rahree* v. *Shumsoonnissa Begum*, 11 Moor. Ind. App. 551, at pp. 585–6).

Now the authorities relied upon by the lady's counsel (Sir R. Palmer) were the Madras cases above discussed; and having regard to the special circumstances of those cases, and to the fact that in the case before the Privy Council the relations subsisting between the parties (that of husband and wife) were also such as to bring it within the operation of the rule of equity already explained, their Lordships cannot be said to have laid down any more binding rule than this, that under *such* circumstances the *onus* of proving the reality and *bonâ fides* of the purchases pleaded by the husband was properly thrown upon him.

The Privy Council Test: Fairness of Bargain.—The general question, however, as to the degree of protection a native woman was entitled to receive from a British Court of Justice again came up before the Privy Council in *Gerish Chunder Lahoree* v. *Mustt. Bhuggobutty Debia* (1872), 13 Moor. Ind. App. 419, and their Lordships (at p. 431) point out that "this Committee and the Courts in India have always been careful to see that deeds taken from *pardah* women have been *fairly* taken; *that the party executing them has been a free agent, and duly informed of what she was about.*"

It may be added, however, that the case was one of a death-bed gift in favour of the donor's brothers, in their wives' names, to the exclusion of her husband's adopted son, in circumstances raising suspicion of fraud, and in the absence of satisfactory proof that the donor knew the nature of the deed.

Unsophisticated, not Incapable.—Here, then, our attention is at once arrested by a new development of the doctrine as to the true test to be applied to dispositions of property and contracts entered into by native women who live in seclusion. The notion of their not being *sui juris* is rightly no longer asserted, nor is it claimed that the Court will in all cases examine into the terms of such disposition or contracts to see if they are "fair and equitable," for assuming that such women have a jural capacity, there would be no justification—in the absence of fraud or undue influence—for interfering with their deliberate and well-understood acts. But all that is required is that the Court should be satisfied that they were *fairly taken*, which the succeeding sentence shows means that the party executing them has been a free agent, and was duly informed of what she was doing. It would also appear that this rule is more specially enforced in cases where a fiduciary relation involving trust and confidence is shown to exist. Thus the case of *Synd Fazzul Hassein* v. *Amjud Ali Khan* (1872), 17 W.R. 523, P.C., was a case of this kind, where the transactions in dispute were in favour of the person who would naturally have advised the Rani, and who not only stood in a fiduciary relation to her, but had in two instances, at least, abused his trust. There was no proof that the Rani had the benefit of any independent advice, and under these circumstances the Privy Council reaffirmed the rule that evidence was necessary, not of the mere signature of the secluded woman, but that she had the means of knowing what she was about.

So in *Asghar Ali* v. *Delroos Bano Begum* (1877), I.L.R. 3 Cal. 324, which was a case where a *parda nashin* lady professed to execute a deed in the Persian language, which she did not understand, the effect of which was to destroy her rights as proprietor and transfer all her property to religious uses, their lordships of the Privy Council, in acting upon the same rule, observed that it was especially necessary to do so in a case such as the one then before their lordships, where for no consideration and without any equivalent a native lady had executed a document which deprived her of all her property. Other cases of a similar character are those of *Taccoordeen Tewarry* v. *Nawab Syed Ali Hassein Khan* (1874), 1 L.R. Ind. App. 192; *Sudisht Lal* v. *Musst. Sheobarat Koer* (1881), 8 L.R. Ind. App. 39; and *Lala Amarnath and Others* v. *Ranee AchanKuar* (1892), 19 L.R. Ind. App. 196 (see p. 200). In *Annoda Mohun Rai* v. *Bhuban Mohini Debi* (1901), I.L.R. 28 Cal. 546, the lady who was sought to be held liable was illiterate, and there was evidence to show that she signed the deed under the direction of her husband, who was a man of violent temper, of whom she was afraid to ask explanations.

On the other hand, where no such special circumstances were shown to exist, the Courts have latterly been less inclined to interfere with deeds which have been *primâ facie* properly executed. See, for instance, *Badi Bibi Sahibal* v. *Samli Pillai* (1892), I.L.R. 18 Mad. 257 (see p. 262); *Khatija* v. *Ismail* (1889), *ibid.* 12, 380 (see pp. 384–5); and *Muhammed Buksh Khan* v. *Hasseino Bibi* (1888), 15 L.R. Ind. App. 81 (see p. 92).

An English Graft on Native Law.—Such, then, is the history of a doctrine which, as we have seen, has passed through more than one phase, and which finds no direct support from the native laws themselves. It was introduced by English judges for the protection of a class which seemed to specially appeal to them for the exercise of their equitable jurisdiction, and it has, no doubt, as a rule, been applied to cases in which the circumstances fully justified such intervention. But it is, nevertheless, a doctrine, even in its final and narrower phase, which requires much discrimination and judgment in its application, in order to prevent it from being availed of by persons in the position of *parda nashins* to avoid their deliberate acts. Women of this class are daily becoming better informed and educated, and are by no means, speaking generally, incapable of understanding the legal consequences of their acts. It is certainly not a doctrine to be widely extended, and the Privy Council has lately refused to apply it to the case of an illiterate but intelligent native Muhammadan lady (a *Kashmirin* by birth) who did not observe the seclusion of strict *parda*, and who was the widow of a Christian, though she herself had never changed her religion (*Hodges* v. *Delhi and London Bank* [1900], I.L.R. 23 Allah. 137). In the case of a woman who did not belong to the class of *purda nashins*, "it must depend in each case," said Lord Hobhouse in delivering the judgment of their Lordships of the Judicial Committee, "on the character and position of the individual woman whether those who deal with her are or are not bound to take special precautions that her action shall be intelligent and voluntary, and to prove that it was so in case of dispute."

MODES OF LEGISLATION IN THE BRITISH COLONIES: NATAL.

[*Contributed by* J. F. W. Bird, Esq., *of the Law Department, Natal.*]

(*Being answers to a series of questions addressed by the late Lord Herschell—the then President of the Society—to the Secretary of State for the Colonies, to obtain information respecting the Common and Statute Law of the several colonies, the methods of legislation, the publication, revision, and consolidation of Statute Law and matters connected therewith. See vol. i., New Series, p. 70.*) *The following answers relate to Natal, and have been drawn up by the Law Department of the Government of that colony under the instructions of the Governor.*

I.—Common Law as the Basis of Statute Law.

(*a*) *What is the Common Law of the colony? Under what circumstances and by whose authority was it introduced?*

Roman-Dutch law was established as the law of this colony by Ordinance No. 12 of 1845, entitled Ordinance for establishing the Roman-Dutch Law in and for the District of Natal.

(*b*) *Is there any law applying exclusively to particular races or creeds?*

There is no *entire* body of law applying exclusively to any particular race or creed.

The natives of the colony are, however, unless exempted from native law, subject to native law, which is codified in Law No. 19 of 1891, known as the "Native Code." The code is mainly declaratory of existing native law.

The Indian Immigration Law, No. 25 of 1891, and its amendments apply *solely to immigrants* introduced from India for labour purposes and their descendants. This Law, which was passed to regulate the introduction and employment of Indian labourers and for their protection whilst under contracts of service, deals also with the marriage laws and to some extent with the domestic relations of these immigrants.

II.—Statute Law.

(*a*) *Of what does the Statutory or Enacted Law of the colony consist? To what extent is it embodied in Charters, Regulations, Orders in Council, Ordinances, or Acts?*

The Statutory Law of the colony consists of:

(1) Ordinances passed by the Legislative Council of the Cape Colony in the years 1844 and 1845, while Natal was a district of the Cape Colony, and

thereafter until the year 1847, when a Legislative Council was established for Natal.

(2) The Ordinances passed by the Legislative Council of Natal as constituted before the grant of the Charter of 1856.

(3) The Laws passed by the Legislative Council from the year 1856 until the introduction of responsible government in 1893.

(4) The Acts of the Natal Parliament under responsible government.

Besides the legislative enactments here referred to, there is also that portion of the Royal Charter of July 15th, 1856, which was restored by Act No. 1. of 1893.

Many Laws and Acts contain provisions enabling the Governor and the Governor in Council to make rules and regulations for the better carrying out of the objects of these Laws and Acts.

(*b*) *To what extent do the Statutes of the United Kingdom operate to the colony by virtue of either*:

(1) *Original extension of English law to the colony;*

(2) *Express provisions of any Order in Council or Charter; or*

(3) *Express adoption by the Legislature of the colony?*

(1) English law is not extended to Natal.

(2) There are a number of Imperial Statutes affecting Natal, some of the chief of which are the Army Act, the Colonial Courts of Admiralty Act, the Copyright Acts, the Foreign Jurisdiction Act, the Fugitive Offenders Act, and the Merchant Shipping Act.

(3) Several English Statutes have been practically adopted by the colonial Legislature, notably the Bills of Exchange Law and the Lands Clauses Consolidation Law.

(*c*) *Is the Statute Law of any other colony in force in the colony?* (*This may happen where one colony has been severed from another.*)

To a slight extent the Statutes of the Cape of Good Hope prior to the severance of Natal from that colony have remained upon the Statute Book.

(*d*) *Is any code or other body of Enacted Law of non-British origin in force in the colony?*

No code of non-British origin is in force in Natal save to the extent already pointed out in reply to I. (*b*).

III.—Methods of Legislation.

(*a*) *By whom are drafts of legislative measures prepared? Is there any official draughtsman? If so, by whom is he appointed, to whom is he responsible, and what are his staff and duties? Do his duties extend to measures introduced by private or non-official members of the legislative body?*

Public Bills are as a rule drafted by the Parliamentary Draughtsman, who holds office also as Secretary, Law Department. This officer is appointed by the Government and is responsible to the Attorney-General as Ministerial head of the Department.

Private Bills, which are for the most part of a municipal character, are framed by the solicitors for the promoters of the Bills, and the draughtsman of the Government Bills is in no way responsible for their preparation. They are, however, scrutinised by him.

Measures may also be drafted by Select Committees appointed for that purpose by either Chamber.

(*b*) *What is the constitution of the Legislative Chamber or Chambers through which measures have to pass?* (*A reference to Statute Law or Charter, or Order in Council or to any recognised text-book will suffice.*) *If there are two Chambers, may measures be introduced in either?*

Under the Constitution Act, No. 14 of 1893, there are two Legislative Chambers—the Council and the Assembly.

The members of the Council are nominated for periods of ten years by the Governor in Council, and those of the Assembly are elected for four years.

Measures may be introduced in either Chamber, save that Appropriation and Taxation Bills must originate in the Legislative Assembly.

The legislative procedure in respect of Bills, both public and private, is identical, practically, in both Chambers.

(*c*) *Are draft measures published before introduction or before any other stage? If so, under what rules?*

Draft measures are for the most part published before introduction, but not necessarily so.

Bills must, however, be published in the *Government Gazette* fourteen days before the second reading can be moved; and private Bills must be printed and published before first reading.

The rules upon these points are contained in the Standing Rules and Orders of each Chamber.

(*d*) *Through what stages does a measure pass before it becomes law?*

Public Bills must pass through the following stages in each Chamber: introduction and first reading, second reading, Committee of the whole House, and third reading. They may, moreover, after second reading, be referred to a Select Committee, wherein, however, no alteration of the principle is permissible.

After passing through these stages in one Chamber, the Bill is transmitted, by message, to the other Chamber, wherein the same procedure is provided for. If adopted without amendment by the Chamber to which it last comes, the Bill is then ready for certificate and submission to the Governor for his assent. If, however, amendments are made by one Chamber in the Bill as passed by the other, the measure, so amended, is retransmitted for consideration of such amendments, which is done in Committee of the whole House. If the amendments are agreed to, the Bill is repassed as amended, duly certified in its then form, and passes through the same procedure in respect of submission for the Governor's assent. If amendments

made by one Chamber are not agreed to by the other, they become the subject of communications between the Houses, and, in the event of continued non-concurrence, the matter may be referred to a conference, or the Bill may be laid aside.

The Governor may, after a Bill is submitted for his assent, return the measure to the Chamber in which it originated, with suggested amendments, which are thereupon considered and dealt with in Committee of the whole House; and, if adopted, they are referred in the usual manner for the concurrence of the other Chamber.

The differential treatment of private Bills is dealt with in the answer to question (*i*) below.

(*e*) *Is any opportunity afforded for referring measures while in course of passage through the Legislature to any special officer or Committee on points of form?*

As above stated, any Bill may be referred to a Select Committee, to which an instruction may be given by the House to deal with it in any particular direction, and which may take powers for leading evidence upon the details of the measure.

There is, however, no provision made for a special officer, or standing Committee, to which measures may be *officially* referred on points of form. The Attorney-General's Department is, however, always available for consultation in this connection.

(*f*) *Have any steps been taken to secure uniformity of language, style, or arrangement of Statutes either by means of a measure corresponding to Brougham's Act* (13 & 14 *Vict., c.* 21) *or to the Interpretation Act,* 1889 (52 & 53 *Vict., c.* 63), *or by official instructions or otherwise?*

Beyond Ordinance No. 2 of 1854 and Law No. 3 of 1887, which provide for the construing and interpretation of Statutes, no steps have been taken in the direction indicated. Uniformity of language, style, and arrangement of Statutes is, however, aimed at as far as possible.

(*g*) *Is there an annual session of the Legislature? Are there any fixed or customary periods of session?*

The Legislature is bound, under the Constitution Act, to meet at least once in every year, so that a period of twelve months shall not intervene between sessions. In view of the close of the financial year on June 30th, Parliament meets customarily for its ordinary annual session between the months of March and August. Special sessions may be held whenever necessity arises.

(*h*) *How are the Acts or Ordinances of the colony numbered or distinguished? Are they numbered by reference to the calendar year or to the regnal year, or in any other way? Is it the practice to confer for convenience of citation a "short title" on each Act or Ordinance? How long has this practice been followed?*

The Acts of Parliament are numbered consecutively in the order in

which they are assented to, in each calendar year, and by reference to the calendar year.

All Acts have not conferred upon them a statutory "short title"; but the practice has been growing in this direction, in the case of Statutes to which a short title is readily applicable, more particularly since the establishment of responsible government in 1893.

(*i*) *Are private Bills (if any) treated separately and under different conditions from public Bills? On what principle is the line drawn between public and private Bills? Are private Acts or Ordinances separately numbered.*

Private Bills, which, as already indicated, are chiefly of a municipal character, are dealt with under different conditions of procedure from public Bills.

Private measures are introduced upon petition, on receipt of which leave is asked to bring in the Bill. This being obtained, the Bill, when printed and published, may be read a first time, and is thereafter referred to a Select Committee, before which the preamble is sought to be proved by the promoters. On the Bill being favourably reported to the House, whether with or without amendments by the Select Committee, the second reading is taken, and the measure then proceeds as in the case of public Bills, until it reaches the other Chamber, where it goes through a similar course of procedure to that imposed in the first Chamber.

The promoters of private Bills are responsible for all expenses and fees incurred in passing such measures through the Legislature.

The line is drawn between public and private Bills on the principle that the primary and chief object of the latter is to promote the interests of individuals, companies, corporations, or local bodies, rather than those of the community at large.

Private Acts are not separately numbered. After passing through Parliament, they are, in this respect, dealt with as public Acts.

(*j*) *Does any practice exist of accompanying a measure on its introduction by an explanatory memorandum?*

There prevails no practice of accompanying a measure on its introduction by an explanatory memorandum, though it has very occasionally been done.

IV.—Publication of Statutes.

(*a*) *In what manner and under what authority are Statutes promulgated?*

Acts of Parliament are promulgated in the *Natal Government Gazette*. Unless some other intention is expressed in the Act, the Act takes effect, according to the provisions of Law No. 3 of 1887, on the day following its promulgation in the *Gazette*.

A copy of each Act, signed by the Governor and bearing the public seal of the colony, is lodged with the Registrar of the Supreme Court.

(*b*) *What evidence is accepted of a Statute having been duly passed?*

The proof of a Law or Act is usually by production of a copy of the

Gazette in which it was promulgated. The Court will, however, if occasion arises, enquire into the correctness of the Statute as promulgated, in order to ascertain that it is the Act as passed by the Legislature and assented to by the Governor, but will not enquire further (*Colonial Secretary* v. *Natal Bank*, 6 Natal Law Reports, p. 111).

(*c*) *In what form or forms, and under what authority, are Statutes printed for publication?*

(*d*) *Are the Statutes of each session published in a collected form at the end of the session?*

The Acts of Parliament are also annually collected and printed in book form by authority of Government.

(*e*) *Are the periodical volumes of Statutes accompanied by*

(1) *An index and table of contents*;

(2) *A table showing the effect on previous legislation?*

The annual volumes of Acts are accompanied only by an index of titles.

(*f*) *What collective editions (if any) of the Statute Law of the colony have been published, and whether by the Government or private enterprise? Are these or any of them periodical? Do such editions comprise those Acts of the United Kingdom in force in the colony?*

(*g*) *Is there any edition of "Selected Statutes" corresponding to Chitty's "Statutes of Practical Utility"?*

The subject of these questions is treated under heads V. and VI.

(*h*) *How are private Acts published?*

Private Acts are published in the same manner as public Acts, are numbered in the same sequence according to the date of assent, and are reprinted, together with the public Acts, in the annual compilation.

V.—Revision of Statutes.

(*a*) *Have any steps been taken for the revision and expurgation of the Statute Law, whether periodically or otherwise?*

Laws dealing with particular subjects have from time to time been consolidated, but no general Statute Revision Law has ever been promulgated. The body of law is not so large as to render such special legislation imperative.

(*b*) *What machinery (if any) exists for this purpose?*

No special machinery exists for dealing with statute revision.

(*c*) *Is there any edition of "Revised Statutes" showing those actually in force? If so, under what authority is it prepared and published, and what is the date of the latest edition? Is it published at periodical intervals, or how otherwise? Are the contents arranged alphabetically, chronologically, or on any other principle.*

An edition of *Revised Statutes* in force is in course of publication at the present time under the authority of Government, and will probably be completed before the end of the current year.

Chitty's Statutes has been adopted as the model of this work.

VI.—Indexing of Statute Law.

(*a*) *Is there any general index to the Statute Law of the colony? If so, on what principle is it arranged, and after what interval is it revised? Does it include both public and private Acts or Ordinances and the Statutes of the United Kingdom which are in force in the colony? Is it accompanied by any table showing how each Statute has been dealt with? What is the date of the latest edition?*

No general index has hitherto been issued by authority.

An index of the laws in force is annually published in the *Natal Directory* (P. Davis & Sons, Publishers, Pietermaritzburg), and this index also indicates the principal Imperial Statutes which have been extended to the colony. It has not the Government *imprimatur*, but is revised in the office of the Attorney-General.

VII.—Consolidation and Codification.

(*a*) *What steps have been taken to consolidate the whole or particular parts of the Statute Law, or to codify any branches of the law? Does any machinery exist for the purpose? Is the work now in progress?*

Nothing remains to be said upon this subject beyond what has already been stated, except that the Native Code of 1891 (schedule to Law No. 19 of 1891) was prepared by a Board appointed under Law No. 44 of 1887.

VIII.—Subordinate Legislation.

(*a*) *What official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation, such as rules or orders made by the Governor or a Minister or Department under the express authority of Statute or Ordinance? Is there any, and what, collection of or index to such subordinate measures?*

No special machinery exists for the purpose of preparing and promulgating rules and regulations. They are in general prepared by the Department charged with their administration and revised by the Secretary of the Law Department, before receiving the sanction of the Governor in Council.

By-laws for purposes of municipal government are framed by the town councils of boroughs and the local boards of statutory townships, and require confirmation by the Governor.

All rules and regulations above referred to, and municipal by-laws, are promulgated in the *Natal Government Gazette.*

They are indexed, together with the Statute Law, in the *Natal Directory* already referred to.

MARRIAGE LAWS OF FOUR TYPICAL COMMUNITIES—HINDU, MOHAMMEDAN, PARSI, AND CHRISTIAN—OF BRITISH INDIA, CHIEFLY ACCORDING TO MODERN CASE LAW.

The following table has been prepared by Mr. FRAMJEE VICAJEE, of the Bombay Bar, to whom the Society is already indebted for contributions:

COMMUNITIES.	1 BETROTHAL OR PROMISE OF MARRIAGE.	2 NATURE OF MARRIAGE-TIE.	3 POLYGAMOUS OR MONOGAMOUS CHARACTER.	4 HOW MARRIAGE IS PROVED OR INFERRED.	5 FORBIDDEN AFFINITIES.	6 PERIOD OF INCOMPETENCY AND RIGHTS THEREAFTER. LIMIT OF AGE OF INCOMPETENCY.	6 RIGHT TO AVOID OR RATIFY MARRIAGE ON ATTAINING AGE.	7 RIGHTS AND DUTIES DURING JOINT LIVES OF MARRYING PARTIES.	8 POWER TO DETERMINE THE MARRIED STATUS. BY WHOM EXERCISABLE.	8 GROUNDS FOR EXERCISE.	9 ISSUE OF MARRIAGE. IF NONE BORN, HOW DEFECTS SUPPLIED BY USAGE.	9 RIGHTS AND LIABILITIES DURING MINORITY OF ISSUE.	10 EFFECT OF APOSTACY.	11 REMARKS.
1. **Hindu** . . .	Suit lies for damages, but not for specific performance.[1]	A *samskara* or sacrament, completed by *Saptapati* or seven steps.[5]	Polygamous, without limit to the number of wives.[9]	No particular kind of evidence required.[13]	All persons who are *outside* the *gotra* or family, and *inside* the caste, are eligible *inter se* for marriage.[17]	Sixteen years; but in Bengal at the commencement of the sixteenth year.[21]	Marriage is indissoluble.[23]	*a.* Reciprocal rights to conjugal duties. *b.* Husband's rights to guardianship of wife and to her *stridhan* during distress. *c.* Wife's right to her *stridhan* or *pulla*, and to maintenance.[29]	Husband has the right, if custom authorised it; but wife has none.[33]	Whenever he wills it.[37]	By *adoption* by the father, or after his death, by his widow to him.[41]	Father or guardian has right (*a*) to the child's custody till age of discretion; and to consent to its marriage; and (*b*) to manage its property. Son, to maintenance and partition of ancestral property. Daughter, to maintenance and marriage portion.[44]	Marriage dissolved by husband's conversion to Islam and re-marriage, but not by that of wife.[48]	1. Hindu law originally directed specific performance of marriage being regarded as a *samskara* or religious duty.
2. **Mohammedan** .	No suit maintainable.[2]	A civil contract.[6]	Polygamous, but limited to four wives at one time.[10]	By *Kazi's* records, if any, or presumed from continuous cohabitation, if there be no negativing circumstances.[11]	Immediate ascendants or descendants by blood or affinity, sister or brother by blood or affinity, or fosterage, and nurse.[18]	Till puberty.[22]	Marriage irrevocable if contracted by father or father's father; but voidable if any other guardian, when the child has the "option of puberty."[26]	*a.* Do. *b.* Do. *c.* Wife's right to *muhr*, or dower, and to maintenance.[30]	By husband, and also by wife, if so empowered at time of marriage by the husband.[34]	By husband, without cause. By wife, if she has stipulated for power to divorce herself.[38]	By *acknowledgment* and treatment as a son by the father.[42]	*a.* Father's or guardian's rights, ditto. *b.* Son's, to maintenance. *c.* Daughter's, ditto.[45]	Marriage dissolved if either party embraces a non-Christian religion, but dissolvable if the husband is a convert to Christianity.[49]	No distinction is specifically drawn between Sunni and Shia laws, to avoid details.
3. **Parsi** . . .	Suit lies for damages only.[4]	A sacrament with *asirvad* ceremony.[7]	Monogamous.[11]	Statutory register of marriage.[15]	Ascendants, descendants, and certain collaterals.[19]	Twenty-one years.[23]	*Semble*, marriage binding.[27]	*a.* Reciprocal rights to conjugal duties. Joint rights of benefit of survivorship as to marriage-presents to the bride. *b.* Mutual rights to judicial separation for cruelty. *c.* Wife's right to alimony.[31]	By Parsi matrimonial courts.[35]	Bigamy, incest, or adultery with cruelty, or two years' desertion.[39]	By appointing a *palaka* or *dharm-putra*, for the performance of religious ceremonies only.[44]	*a.* Do. *b.* Do. *c.* Do.[46]	Do.[50]	
4. **Christian** . .	Do.[3]	A contract with or without religious ceremonies.[8]	Do.[12]	Do.[16]	Those relations who are prohibited by the custom of the class, and not necessarily by the law of England.[29]	Twenty-one years.[24]	Marriage binding.[28]	*a.* Do. *b.* Do. *c.* Do.[32]	By district and high courts.[36]	Do., with additional ground of change of religion.[40]		Do.[47]	Marriage dissolvable at wife's suit, if husband has changed his religion and (or) remarried.[51]	

[1] Mayne's *Hindu Law* (6th ed., 1900), § 95, p. 115; *Umed* v. *Aagindas* (1870), 7 Bom. H.C. [Or.] 122; Specific Relief Act, Act 1 of 1877, s. 21, ch. (*b*) Ill.; *Mulji* v. *Gomti* (1897), 11 Bom. 412.

[2] Ameer Ali's *Mohammedan Law* (2nd ed., 1894), vol. ii. 298; but a suit lies for jactitation of marriage (*Mirasmat Ali* v. *Mahomad-ul-Nissa* [1898], 10 All. 96).

[3] The English and Parsi laws are the same on this point.

[4] *Finlay* v. *Chirney* (1888), 20 Q.B.D. 494 (504–5).

[5] Mayne, § 95, p. 116; *Surjyamoni* v. *Kali Kanta* (1901), 28 Cal. 37 (48–52), in which marriage being alleged, proof of rites and ceremonies was insisted on. Hence, marriages actually celebrated have been upheld (*a*) on the principle of *factum valet quod fieri non debuit*, though made with the consent of unauthorised persons (*Venkatacharyulu* v. *Rangocharyulu* [1891], 14 Mad. 316); (*b*) though made with impotent husbands (*Kaushi* v. *Biddya* [1876–8], 1 All. 549); and (*c*) with lunatics (*Debi Charan* v. *Radha Sharan*, 2 Mor. Dig. 99).

[6] *Abdul* v. *Salima* (1886), 8 All. 149 (155); marriage, it is said, may be made, like any other contract, through "a common agent authorised to act on both sides."

[7] Parsi Marriage and Divorce Act, Act 15 of 1865, s. 3.

[8] Indian Christian Marriage Act, Act 15 of 1872, s. 5, sub-ss. (4) and (5).

[9] Mayne, § 92, p. 109. Bigamy was prohibited by custom in the Gundhurvu (musician) caste of Ahmedabad to the husband, except in cases where the wife was blind, barren, or suffering from other physical defects (*Mahashankart Mt. Ootum* [1821–4], 2 Bor. 272).

[10] Macnaghten's *Principles and Precedents of Mohammedan Law* (1890), ch. vii. pl. 8.

[11] Act 15 of 1865, s. 4.

[12] *Thapitu Peter* v. *Thapitu Lakhsmi* (1894), 17 Mad. 235.

[13] *Luchmi* v. *Raghu* (1900), 27 Cal. 971. Where there has been a continuous connection with a concubine and she has not been discarded, she is entitled to maintenance (*Ramanarasu* v. *Buchamma* [1900], 23 Mad. 282).

[14] *Khajah Hedayet* v. *Rai Jan* (1841–6), 3 M.I.A. 295; *Mahammad* v. *Shurfoon* (1859–61), 8 M.I.A. 136.

[15] Act 15 of 1865, s. 8.

[16] Act 15 of 1872, part iv.

[17] Mayne, § 46, pp. 101–2; West and Buhler's *Digest* (3rd. ed., 1884), p. 490, note (*b*). Marriage with a wife's sister or a step-mother's sister is not illegal (*Raghavendra* v. *Jayarum* [1897], 20 Mad. 283); but there is an indication of judicial opinion in favour of the daughter of an adoptive brother (*Vithilinga* v. *Vijiathammal* [1883], 6 Mad. 43). Among the Lingayets who are Sudras and heretics from Hinduism, marriages between members of different sects are not invalid (*Fakirgandie* v. *Gangi* [1898], 22 Bom. 277). As to other sects of Sudra caste, see *Upoma* v. *Bholaram* (1888), 15 Cal. 708.

[18] Macnaghten, vii. 9. Marriage with a wife's sister is void (*Aizunnissa* v. *Karrimussa* [1896], 23 Cal. 130).

[19] For an exhaustive list of prohibited relations, see Table A to Act 15 of 1865, s. 3.

[20] *Lopez* v. *Lopez* (1886), 12 Cal. 706; *Hilliard* v. *Mitchell* (1890), 17 Cal. 324. Marriage with a deceased wife's sister is not void where the domicile of the husband is Indian (*Das Maras* v. *Cones*, 2 Hyde 65).

[21] *Hari* v. *Vasudev* (1864–6), 2 Bom. H.C. 325 (329, note *b*); *Mothoor* v. *Soorendro* (1876), 1 Cal. 108.

[22] There is no fixed age for puberty, but it depends on circumstances. Wilson, §§ 91–2, pp. 92–4; also § 137, p. 127.

[23] *Soralzi* v. *Buckoobai* (1894), 18 Bom. 366.

[24] *Rohilkand and Kumaon Bank* v. *Row* (1885), 7 All. 490.

[25] Manu, ch. ix. v. 46.

[26] Wilson, § 92, p. 94; *Badal* v. *Queen-Empress* (1892), 19 Cal. 79 (82), where a distinction is indicated between the Sunni and Shia schools as to the "option of puberty." The former regards the marriage binding unless repudiated; the latter requires, on the contrary, ratification on attaining puberty.

[27] *Peshotan* v. *Meherbai* (1886), 13 Bom. 302.

[28] Hammick's *Law of Marriage* (1873), 62.

[29] Husband's suit, *Dadaji* v. *Rukhmabai* (1886), 10 Bom. 301; wife's suit, *Surjyamoni* v. *Kali Kanta* (1901), 28 Cal. 37; *Yamunabai* v. *Narayan* (1876–7), 1 Bom. 164, as to cruelty; and *Lakshman* v. *Satyabhamabai* (1878), 2 Bom. 494. See also Wilson and Buhler, 92, note (*b*), as to wife's property.

[30] *Moonshee Bazloor Radeem* v. *Shamshoonissa* (1867), 11 M.I.A. 551. See as to husband's right over his wife, Wilson's *Digest*, § 51, pp. 47–50.

[31] Act 15 of 1865, s. 36. As to marriage-presents, *Byramji* v. *Jamsetji* (1892), 16 Bom. 630.

[32] Act 4 of 1869, s. 37; *Queen* v. *Jackson* (1891), 1 Q.B. 671.

[33] Mayne, § 92, p. 110; *Administrator-General* v. *Anandachari* (1886), 9 Mad. 466; Mayne, § 456, pp. 593–4.

[34] Wilson, ch. iii. pp. 59–68. A Shia husband married in the *muta* form—*i.e.*, for a fixed period—may terminate his marriage by giving away "the unexpired residue of the term" (*Mahomed* v. *Ludden* [1887], 14 Cal. 276). Wilson summarises in a series of sections (ss. 72–7) the "text-law" of "judicial divorce," but there are no cases cited.

[35] Constituted under Act 15 of 1865.

[36] Act 4 of 1869, s. 17.

[37] Mayne, § 92, p. 110; West and Buhler, 424–5.

[38] *In re Abdul Ali* (1883), 7 Bom. 182; *Hamidoolla* v. *Faizunissa* (1882), 8 Cal. 327.

[39] Act 15 of 1865, s. 30.

[40] Act 4 of 1869, s. 10.

[41] Mayne, § 108.

[42] *Mahamed* v. *Lalli* (1882), 8 Cal. 422 (428).

[43] *Homabaee* v. *Punjeabhaee* (1835), 5 Suth. W.R. (P.C.) 102.

[44] *Re Manital* (1901), 25 Bom. 353; *In the Matter of Sakethri* (1892), 16 Bom. 307 (326)

[45] Wilson's *Digest*, §§ 107–131.

[46] *Reg.* v. *Bezonji* (1853), Perry's *Oriental Cases*, 91.

[47] Act 4 of 1869, s. 3 (5), defines minor sons and daughters of native fathers whose marriage is dissolved to be of the respective ages of sixteen and thirteen years.

[48] Act 21 of 1866; *Sinammal* v. *Administrator-General* (1885), 8 Mad. 169; *In the Matter of Ramkumari* (1891), 18 Cal. 264.

[49] Ameer Ali, vol. ii. § vi. p. 343.

[50] Act 21 of 1866.

[51] *Skinner* v. *Skinner* (1897–8), 25 I.A. 34.

REVIEW OF THE LEGISLATION OF THE BRITISH EMPIRE IN 1900.

TABLE OF CONTENTS.

PAGES

INTRODUCTION—*Contributed by* Sir Courtenay Ilbert, K.C.S.I. 278–280

I. UNITED KINGDOM—*Contributed by* J. M. Lely, Esq. . . 281–311

II. BRITISH INDIA—*Contributed by* Sir Courtenay Ilbert

1. Acts of Governor-General in Council 312–315
2. Madras 315
3. Bombay 316
4. Lower Provinces of Bengal 316
5. North-West Provinces and Oudh 316
6. Punjab 316–317
7. Burma 317
8. Regulations under 33 Vict., c. 3 317–319

III. EASTERN COLONIES—

1. Ceylon . *Contributed by* F. H. M. Corbet, Esq., and R. F. Honter, Esq. . . 319–321
2. Straits Settlements . *Contributed by* Walter J. Napier, Esq. . 321–325
3. Federated Malay States „ „ „ „
   (i) Perak 326
   (ii) Selangor 326
   (iii) Pahang 326
   (iv) Negri Sembilan 326
4. Hong-Kong . *Contributed by* F. H. M. Corbet, Esq., and R. F. Honter, Esq. . 326–329

IV. AUSTRALASIA—

1. British New Guinea . *Contributed by* W. F. Craies, Esq. . 329–331
2. Fiji . . . „ „ „ „ . 331–332
3. New South Wales . „ „ A.R. Butterworth, Esq. 332–338

PAGES

4. New Zealand . . *Contributed by* G. R. Benson, Esq. . 339–350
5. Queensland . . „ „ W. F. Craies, Esq. . 350–356
6. South Australia . . „ „ A. Buchanan, Esq. . 356–363
7. Tasmania . . „ „ J. W. Fearnsides, Esq. 363–365
8. Western Australia . „ „ R. W. Lee, Esq. . 366–369
9. Victoria . . . „ „ H. E. Gurner, Esq. . 369–374
10. Western Pacific . „ „ W. F. Craies, Esq. . 374–375

V. SOUTH AFRICA—*Contributed by* Israel Davis, Esq.

1. Cape of Good Hope 375–376
2. Natal 377–378
3. Southern Rhodesia 378–380

VI. WEST AFRICA—*Contributed by* Albert Gray, Esq.

1. Gambia 380–381
2. Gold Coast 381–383
3. Lagos 384–385
4. Sierra Leone 385–387
5. Southern Nigeria 387–389

VII. SOUTH ATLANTIC—*Contributed by* E. Manson, Esq.

1. Falkland Islands 389–390

VIII. NORTH AMERICAN COLONIES—

1. Dominion of Canada . *Contributed by* J. A. Simon, Esq. . 390–392
2. British Columbia . „ „ Walter Peacock, Esq. . 392–395
3. Manitoba . . „ „ H. Stuart Moore, Esq. 395–397
4. Newfoundland . „ „ L. S. Bristowe, Esq. . 397
5. North-West Territories „ „ H. Stuart Moore, Esq. 398–399
6. Province of Ontario . „ „ E. Manson, Esq. . 399–401
7. Prince Edward's Island „ „ H. Stuart Moore, Esq. 402
8. Province of Quebec . „ „ E. Manson, Esq. . 403–405

IX. WEST INDIES—

1. The Bahamas . *Contributed by* Wallwyn P. B. Shepheard, Esq. 405–406
2. Barbados . „ „ „ „ „ . 406–409
3. Bermuda . „ „ The Hon. Reginald Gray . 409–410

PAGES

4. British Guiana *Contributed by* Wallwyn P. B. Shepheard, Esq. 411–414
5. British Honduras „ „ „ „ . 414
6. Jamaica . . „ „ S. Leslie Thornton, Esq. . 414–418
7. Turk's and Caicos Island . *Contributed by* Wallwyn P. B. Shepheard, Esq. . 418
8. Trinidad and Tobago . *Contributed by* Wallwyn P. B. Shepheard, Esq. . 419–421
9. Windward Islands—*Contributed by* H. L. Ormsby, Esq.
   - (i) Grenada 422–424
   - (ii) St. Lucia 424–425
   - (iii) St. Vincent 425–426
10. Leeward Islands—*Contributed by* H. L. Ormsby, Esq.
   - (i) Federal Legislation 426–427
   - (ii) Antigua 427–429
   - (iii) Dominica 429
   - (iv) Montserrat 429–430
   - (v) St. Christopher and Nevis 430–431
   - (vi) The Virgin Islands 431

X. MEDITERRANEAN COLONIES—*Contributed by* Albert Gray, Esq.

1. Cyprus 432
2. Gibraltar 432–433
3. Malta 433

INTRODUCTION

TO THE

REVIEW OF LEGISLATION.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

The annual summaries of English and colonial legislation which have now for several years been published by the Society of Comparative Legislation supply raw materials for the study, mainly of one branch, incidentally and occasionally of other branches, of the science of comparative jurisprudence. For the student who desires to analyse and draw inferences from these materials, no better guide can be found than the admirable essay on "Methods of Legal Science" which has just appeared in Mr. Bryce's *Studies in History and Jurisprudence*. It will show him what he ought to look for, what he may expect to find, what cautions should be observed, what reservations must be made, in drawing conclusions. "An examination of the various ways in which economic and social problems have been dealt with in recent times, and in which commerce has been regulated and crime checked, is," as he remarks, "in the highest degree interesting and useful." But "it is rather to the province of legislation than to that of law that this part of comparative jurisprudence belongs," and "the utility for practical guidance of the results which an examination of the legislation of various civilised states supplies is somewhat reduced by the difficulty of determining how much of these results, be they good or evil, is in each case attributable to legal enactments, how much to the social and economical environment in which the enactments work." Administrative experiments, dealing with sundry social and economical problems, the student will find in great number and variety. Constitutional experiments he will sometimes find. He will note praiseworthy attempts to improve the form of the law, by means of consolidation, or, more rarely, of codification. But he is not likely, nor would he expect or desire, to find, at least in English-speaking countries, any serious departures from the fundamental ideas and conceptions of English law.

Some of the more interesting features of the legislation of 1900 may be very briefly noted.

In the field of constitutional law by far the most important legislative event of the year was the Act which constituted the Commonwealth of Australia, a measure of which a full and illuminative discussion is to be found in Mr. Bryce's new volumes.[1]

Victoria tried, by a temporary law, the experiment of allowing her electors to vote by post.

Industrial and economical problems were, as usual, prolific of legislation. The United Kingdom extended to the agricultural labourer the scope of its Workmen's Compensation Act, and New Zealand and South Australia legislated on the lines of the English law. New Zealand re-modelled its well-known Industrial Conciliation and Arbitration Act, and Tasmania dealt with the same subject on New Zealand lines. New Zealand, again, always bold in economical experiments, incorporated by law in contracts with the Government or with local authorities provisions for securing fair wages and reasonable hours of work. New South Wales passed an Act providing for old age pensions, with a preamble reciting that "it is equitable that deserving persons who during the prime of life have helped to bear the public burdens of the colony by payment of taxes, and by opening up its resources by their labour and skill, should receive from the colony provision in their old age."

Laws for the regulation of native labour, of which New Guinea supplied a specimen, belong rather to the class of problems arising out of the contact with uncivilised races. Other phases of the same problem are illustrated by the West African enactments against the abuse of "concessions," by the establishment of Maori councils in New Zealand, and by the regulations made by the Governor-General for the government of the less civilised tracts of British India.

In the domain of commercial law, the Parliament of the United Kingdom tried, by its Companies Act, to circumvent the astute company promoter. In the same session it endeavoured, by its Money-Lenders Act, to defeat the usurer, but this Act appears to have, so far, disappointed the expectations of its supporters.

The evils of usury supplied the mainspring of the heroic efforts which were being made at the same time by the Indian Legislature to prevent land from passing out of the hands of the cultivator into those of the money-lender.

Education and drink plague the legislator at the Antipodes as well as at

[1] Vol. i. p. 468.

Westminster. In 1900 New South Wales passed an Inebriates Act and New Zealand remodelled its local education boards.

There was nothing comparable to the great Queensland Criminal Code of 1899, but Ceylon passed a Criminal Procedure Code, New South Wales consolidated its Criminal Statutes into a Crimes Act, and the Consolidation Acts were numerous.

There is a smell of gunpowder about the Treason, Special Tribunals, and Indemnity Acts of the Cape and Natal, and about the Defence Acts passed by some of the other colonies.

I. UNITED KINGDOM.[1]

[*Contributed by* J. M. Lely, Esq.]

Acts passed—Public General, 63; Local, 291; Private, 1.

A Parliament legislating in its fifth year and seventh Session during a time of war could not have been expected to do very much, and her late Majesty the Queen had warned Parliament in her opening speech that the time was not propitious for domestic reforms involving a large expenditure. The legislative output, however, was greater both in quantity and quality than had been anticipated. The Commonwealth of Australia Constitution Act, the Companies Act, the Agricultural Holdings Act, the Workmen's Compensation Act, the Money-Lenders Act, and the Housing of the Working Classes Act were placed on the Statute Book, sixty-three Acts being passed in all. Subjoined is an account of the principal Acts passed in the 1900th year of our Lord, and in the 63rd and 64th years of the reign of her late Majesty, supplying where necessary or desirable such additional information as the Legislature too frequently gives merely by allusive reference to previous legislation.

Agriculture.—Mr. Long's Agricultural Holdings Act (c. 50, E.S.) considerably alters the law in point of substance and very considerably alters it in point of form. The consumption of corn by stock and the laying down temporary pasture are added to the list of improvements for which, though effected without either consent of, or notice to, his landlord, a tenant may claim compensation; a tenant is enabled to send in a claim up to the last day of his tenancy instead of being obliged to send it in at least two months before that day; if he has acquired fixtures or buildings, they become removable at the end of the tenancy

[1] This summary of the principal public Acts of the last Session of the late Parliament is a reproduction, with some alterations and additions, of the Introduction to the Continuation Volume for 1900 of *Chitty's Statutes of Practical Utility*, which Introduction was itself practically a reprint of an article, by the editor of that Continuation Volume, in the *Times* of October 8th, 1900, entitled "Legislation of the Past Session."

Statutes applying to the whole of the United Kingdom are distinguished by the letters U.K. after the chapter; Statutes applying to England (including Wales) only, by the letter E. after the chapter; and Statutes applying to Scotland or Ireland only, by the letters S. or I. after the chapter.

to the same extent as if he had himself put them up; and, with some important exceptions, the liability to pay higher fixed rents in the event of breaches of covenant is reduced to a liability to pay damages to the extent only of the damage actually suffered, the exceptions being of covenants against breaking up permanent pasture, grubbing underwoods, felling, cutting, or lopping or injuring trees, and of covenants regulating the burning of heather. The landlord gains the right, which he already has in the majority of cases if the contract of tenancy be in writing, but not otherwise, of entering a farm at all reasonable times for the purpose of ascertaining its condition, and both parties gain the power, occasionally inserted in written contracts of tenancy, of referring claims outside the Acts to arbitration under the Acts.

Thus far as to points of substance. As to points of form, the right of compensation is new, the list of improvements is new, and the whole procedure for arbitration is new, seventeen sections (including the first) and the main schedule of the Act of 1883 being wholly repealed, and s. 1 of the new Act commencing as follows:—

> When a tenant has made on his holding any improvement comprised in the first schedule to this Act he shall . . . be entitled at the determination of a tenancy on quitting his holding to obtain from the landlord as compensation . . . for the improvement such sum as fairly represents the value of the improvement to an incoming tenant. Provided always that in estimating the value of any such improvement there shall not be taken into account as part of the improvement made by the tenant what is justly due to the inherent capabilities of the soil.

The proviso which guards the inherent capabilities of the soil has been for nearly twenty years on the Statute Book, but the law reports may be searched in vain for any judicial interpretation of it during that time. Omitted from the Government Bill in pursuance of the unanimous recommendation of a Royal Commission, but restored in the House of Lords by an overwhelming majority, the proviso is believed to have no meaning whatever, though possibly its deliberate omission in an otherwise re-enacted enactment might, as contended by Lord Grey and the Duke of Northumberland in the House of Lords, have had some effect prejudicial to the landlord upon the minds of arbitrators. The scheduled improvements now amount to twenty-seven in all. In the case of buildings and fifteen other kinds of permanent improvement, the consent of the landlord must have been obtained or compensation will not be recoverable. In the case of drainage, notice must have been given. In the case of ten kinds of lesser improvement, such as claying, liming, application of purchased manure, "consumption on the holding by cattle, sheep, pigs, or by horses, other than those regularly employed on the holding, of corn, cake, or other feeding stuff not produced on the holding," laying down temporary pasture and planting asparagus in a market garden, neither consent of

the landlord nor notice to him is a condition of the right of the tenant to compensation.

Forms of award have been prescribed by the Board of Agriculture, as directed by the Act, and any forms for proceeding in an arbitration which may be so prescribed are to be sufficient if used. Points of law will go first to the county court judges and from them direct to the Court of Appeal, whose judgment will be final. Wilfully false evidence in an arbitration is made perjury (as in the Act of 1883), and (as in that Act) "may be dealt with, prosecuted, and punished accordingly"—that is to say, by penal servitude or imprisonment. The very curious Elizabethan Act, by which the convicted perjurer forfeits £20, and, if he has not got that sum, must stand on the pillory for a year *with both his ears nailed thereto*, and be declared incapable to give any more evidence in any Court for ever, is impliedly deprived of its penal force by the general words of an Act of 1837, but Statute Law Revision Acts have left its penal clauses unrepealed, and its civil disability appears still to form part of the law of perjury.

Unlike the Act of 1883, which is followed on the Statute Book by a separate Scotch Act, the new Act extends to Scotland, contains two sections applicable to Scotland only, and repeals thirteen whole sections, together with the improvement schedule, of the Scots Act.

The Workmen's Compensation Act (c. 22, U.K.) of Mr. H. Foster (backed also by Mr. Goulding, Mr. Strutt, Lord Willoughby de Eresby, Col. Chaloner, Sir C. Gull, Mr. Carlile, and Mr Giles), "to extend the benefits of the Workmen's Compensation Act, 1897, to workmen in agriculture," is as short as it is comprehensive, containing one operative section only, and depending for its effect almost wholly upon the Workmen's Compensation Act of 1897, and the rules under that Act, which, though originally limited in its application to railway, factory, and other named dangerous employments only, is now directed to "apply to the employment of workmen in agriculture by any employer who habitually employs one or more workmen on such employment." The expression "agriculture" includes "horticulture, forestry, and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit and vegetables"—a definition obviously borrowed from that given in Mr. Chaplin's Small Holdings Act of 1892, from which it differs only in unimportant particulars. Comprehensive as this definition is, the application of the Act is made more comprehensive still by the direction that, where any workman is employed by the same employer mainly in agricultural, but partly or occasionally in other work, the Act is to apply also to the employment of the workman in such other work. It is also material to point out that the Act contains no restriction of the term "employment" to employment for profit to the employer, and that, therefore, every gardener in the United Kingdom is entitled to its benefits. The

incorporated Act of 1897, which has been the subject of a decision of the House of Lords leaving the employer without any limitation of time to his liability, in addition to numerous other judicial decisions of a legislative character, under certain restrictions fixes the employer with liability to pay compensation to a workman physically injured, or to the dependants of a workman killed by accident arising out of and in the course of his employment. The restrictions are, that the employer is not liable for any injury (1) not disabling the workman for at least two weeks from earning full wages, or (2) attributable to the serious and wilful misconduct of the workman. There are also important limits to the amounts recoverable, the workman being only entitled to receive compensation "where total or partial incapacity for work results from the injury, a weekly payment, during the incapacity after the second week, not exceeding fifty per cent. of his weekly earnings during the previous twelve months, if he has been so long employed, but if not, then for any less period during which he has been in the employment of the same employer, such weekly payment not to exceed £1," and the compensation to dependants of a workman in case of death not to exceed £300.

The Act did not come into operation until July 1st last, so that there was plenty of time for the new Parliament to amend it, but no amendment has been made.

Animals.—The Wild Animals in Captivity Protection Act (c. 33, E.I.) (backed by Mr. H. D. Greene, Sir R. Reid, the Hon. A. Lyttelton, Mr. B. Jones, and Mr. Banbury) makes it an offence by "wantonly or unreasonably" doing or omitting any act to cause any unnecessary suffering or cruelly to abuse, infuriate, tease, or terrify any captive "animal" or "animal" maimed, pinioned, or otherwise dealt with to prevent its escape from captivity, the term "animal" in the Act meaning any bird, beast, fish, or reptile not included in the existing Cruelty to Animals Acts, which continue entirely unrepealed. Those Acts, which are expressly confined to domestic animals, have been held to include decoy linnets, but not caged performing lions, tame seagulls, and unacclimatised parrots, and even wild rabbits netted and boxed up for nearly a week; but in giving judgment for the proprietor of the lions (whose evidence to rebut the charge of cruelty it had not been necessary to hear), the late Mr. Justice Cave observed:—

> These Acts are of very modern date, and no doubt the public feeling which enabled them to be passed has been gradually accumulating and strengthening. It may be that Parliament at some future time will think fit to provide for the protection of all wild animals, but at present it has not done so.

The present Act carries out the above prognostication, and appears to apply to all animals not included in the earlier Acts, except men and insects. The Act does not apply to the permitted vivisection under the Act of 1876, nor to Scotland, which has separate Acts of her own, and also, in burghs, an enactment by the wording of which, at any rate, insects are included.

Arms.—The Exportation of Arms Act (c. 44, U.K.), which received the Royal Assent on August 6th, empowers the King to prohibit the exportation of arms, ammunition, military and naval stores, and "any article which his Majesty shall judge capable of being converted into or made useful in increasing the quantity of arms, etc., to any country or place" in a Royal Proclamation named "whenever the King shall judge the prohibition to be expedient to prevent the arms, etc., being used against his Majesty's subjects or forces, or against any forces in alliance with his Majesty's forces."

A proclamation prohibiting the exportation of arms and ammunition to China was issued by her late Majesty on the day after the passing of the Act.

Army, Navy, and Volunteers.—The short annual Army Act (c. 5, U.K.), without the passing of which a standing Army is contrary to law, continues for one more year the comprehensive Army Act which has superseded the long annual Mutiny Acts since 1881, and impliedly authorised a strength of 430,000—as against the strength of 184,153 impliedly authorised in 1889—exclusive of the Indian Army; and the Reserve Forces Act (c. 42, U.K.), enacts that men in the second division of the first class of the Army Reserve shall be liable to be called out on permanent service, notwithstanding that directions have not been given for calling out the whole of the first division on such service, consequentially repealing a provision of the Reserve Forces Act, 1882, to the contrary effect.

The Electoral Disabilities (Military Service) Removal Act (c. 8, U.K.) removes the electoral disabilities which would otherwise attach to reservists, Militiamen, Yeomen, and Volunteers in consequence of their absence on military service "during the continuance of the present war in South Africa." The ordinary law is that an elector cannot be registered as such, and therefore cannot vote, unless he has occupied premises within his electoral area for the whole period of twelve months preceding July 15th in the year in which registration takes place. The new Act directs that Reservists, Militiamen, Yeomen, and Volunteers shall not be disqualified for registration either as Parliamentary or local electors by having been absent on military service for any part of this qualifying period of twelve months, and that a person so absent shall not be disqualified by reason of his wife or children having received parochial relief during his absence. The claim of such a person to be registered as a lodger—which must be made every year, though by claiming before July 25th in any year after the first registration the lodger may, if he pleases, place himself in a position not to be so easily objected to—may be made by any other person on the lodger's behalf.

By the Duke of Northumberland's Members of Local Authorities Relief Act (c. 46, U.K.) an officer or soldier of the auxiliary or reserve forces on active service, or on service beyond the seas, is not by absence on that service to be disqualified or vacate his office as a county, borough, district, or parish councillor or guardian of the poor. The ordinary

statutory disqualifications are for a county councillor six months', for a borough councillor three months', for a district councillor or guardian four months', and for a parish councillor six months' absence. The new Act, in spite of the protest of Lord Spencer in the House of Lords, removes the disqualification in the case of the favoured councillors without any limit of time.

The Police Reservists (Allowances) Act (c. 9, E.S.) enables police authorities, if they think fit, to grant to or for the wife or children of a police reservist called out for permanent service, or in the case of an unmarried man to or for the benefit of any person whom he is bound to maintain, and towards whose support he has regularly contributed, such an allowance as they may think equitable. The allowance, however, may not be made for more than a year, though it may be renewed for a further period, and is in no case to exceed the total weekly amount which the man was receiving from police funds when called out, or, if he be unmarried, eight shillings a week. If he be killed or disabled, the police authority have the same power of granting gratuities to him or his family as if he had continued in the police force, and if he returns to that force he is not to be a loser either in rank or pay. Allowances or gratuities granted before the passing of the Act (which passed on May 25th) are confirmed, "and any such allowance may be continued until the expiration of two months from the passing of this Act and no longer, unless it is in conformity with the passing of this Act."

The short Naval Reserve (Mobilisation) Act (c. 17, U.K.) amends the Royal Naval Reserve Volunteer Act, 1859, by enabling the Admiralty to call out men as they want them, and the much longer Naval Reserve Act (c. 53, U.K.) was explained by Mr. Goschen to have for its object the formation of a new reserve of 15,000 men from men who had served twelve years in the Navy. The Act of 1859 allows the keeping up of not more than 30,000 men by voluntary enlistment from among seafaring men and others who may be deemed suitable for the services in which such volunteers may be employed. The pressing of men for the Navy, though not resorted to since the close of the long war, appears to be still lawful.

The Volunteer Act (c. 39, E.S.) allows Volunteers to be called out "in case of imminent national danger or of great emergency," and not only "in a case of actual or apprehended invasion of the United Kingdom"—as was provided by the Volunteer Act, 1863—the former phrase being verbally substituted for the latter. It also becomes lawful for his Majesty to accept the offer of any Volunteer to the liability to be called out for actual military service at any time for coast defence at such places in Great Britain as may be specified in his agreement.

The Military Lands Act (c. 56, U.K.) enables such county or borough councils as hold land for Volunteer corps to let the land on lease to any such corps for ninety-nine years, or any less term, and adds that the power

of a Volunteer corps to borrow, and of the Public Works Loan Commissioners to lend, shall extend to the borrowing and lending on any such lease. If the corps be disbanded, the lease is to vest in the Secretary of State, subject to repayment of the money borrowed. The Act also regulates the use for naval purposes of land abutting on the sea or tidal waters under the joint superintendence of the Admiralty and the Commissioners of Woods with full regard to the rights of owners to compensation for "injuriously affecting" them under the compulsory clauses of the Lands Clauses Acts.

Burial.—The Burial Act (c. 15, E.) is founded on a report of 1898 of a Select Committee of the House of Commons to the effect that the law of burial is unduly complex and some of its provisions unjust; that its machinery is cumbrous and defective; that its operation has been a frequent cause of controversy and sometimes fraught with deplorable consequences to the peace of the localities concerned; and that the Burial Acts ought to be consolidated, simplified, and amended. The new Act, which came into operation on January 1st and repeals wholly or in part twenty-two sections of six of the twenty-two previous Statutes (mainly adoptive only) dating from 1852, to a great extent carries out in ten sections the fourteen recommendations of the Committee in respect of burial-grounds provided by local authorities, burial in churchyards not being touched except by a slight amendment of the Act of 1880, by which burial without a Church of England service was first authorised. The Home Office is empowered to approve partial consecration, and to direct any person to hold an enquiry into any matter relating to consecration, to building of chapels, or to any fees payable to ministers of religion, ecclesiastical officers, and sextons in connection therewith. Numerous administrative powers under the existing Acts are transferred from the Home Office to the Local Government Board.

Consecration itself is regulated as follows: The burial authority may apply to the Bishop of the diocese to consecrate any portion of a ground approved by the Home Office. If they do not so apply, and the Home Office is satisfied that a reasonable number of the inhabitants of the burial district desire that a portion of the ground be consecrated, and that the consecration fees are safe, the Home Office may make the application "and the Bishop may consecrate accordingly," it being made "the duty of the burial authority to make such arrangements as may be necessary for the consecration." It may be observed here that there is no Prayer Book or other legally prescribed form of consecration service. That in general use from the reign of Queen Anne downwards (see Wilkins's *Concilia*, vol. iv. at p. 609) was accepted by both Houses of Convocation, but did not receive the Royal Assent. Each Bishop is at liberty to use a form of his own, an appeal from a refusal to consecrate lying to the Archbishop. The Consecration Acts of 1867 and 1868 apply only to churchyards and burial grounds attached to "union houses." The Act also provides that—

A burial authority may at their own cost erect on any part of their burial-

ground which is not consecrated or set apart for the use of any particular denomination any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after the passing of this Act shall not be consecrated or reserved for any particular denomination.

A burial authority may, at the request and cost of the residents within their district belonging to any particular denomination, erect, furnish, and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use.

No fees are to be payable to any incumbent for burial in a burial-ground except for services rendered or during the incumbencies of existing incumbents, or in any case after the expiration of fifteen years, and the existing fees may be commuted with the assistance of the Ecclesiastical Commissioners. Incumbents of parishes within burial districts provided with burial-grounds under the Act of 1879 (Marten's Act) have the same obligation to bury their parishioners and persons dying in their parish as they have already under the Burial Acts, and "boundary fences" are no longer to be erected in burial-grounds provided under the Act of 1879. The notice of intention to bury is to be given at such time and to such person as the burial authority may direct, and so much of the Act of 1880 as requires forty-eight hours' notice to be given in any such case is repealed. The Act was well described by Sir M. W. Ridley in the House of Commons as "paving the way for consolidation," and no doubt it would be highly desirable to consolidate the twenty-two Statutes relating to burial, which for complexity and obscurity furnish no parallel in Victorian legislation, or furnish a parallel in the Licensing Acts alone.

Census.—The Census (Great Britain) Act (c. 4, E.S.) directed that the British decennial census, first taken in 1801, should be taken of all persons who abode in any house in Great Britain on the night of Sunday, March 31st last, the Irish census being provided for by a separate Census Act (Ireland) (c. 6.) fixing the same census day. The taking of the census was superintended by the Local Government Board, the Registrar-General issuing the necessary forms and instructions, and the Treasury paying the expenses. The census papers were left by the enumerators—and overseers of the poor and relieving officers were bound to act as enumerators, if so required by the Local Government Board—at each dwelling-house in the course of the week ending on Saturday, March 30th, and called for on Monday, April 1st, when the occupier had to deliver them filled up with the name, sex, age, occupation, condition as to marriage, relation to head of family, birthplace, and in the case of birth abroad the nationality of every living person who abode in his house on March 31st. There had also to be statements (1) whether any such person was blind, or deaf and dumb, or imbecile or lunatic; (2) of the number of rooms, if less than five, occupied by the occupier; and (3) in Wales or Monmouthshire, whether any such person "speaks English only or Welsh only or both English and Welsh."

The Registrar-General had to obtain returns of persons travelling or on shipboard or otherwise not abiding in houses. There were the usual penalties on defaulting enumerators and occupiers refusing to fill up census papers, and any person "employed in taking the census" communicating without lawful authority any information acquired in the course of his employment was newly declared to be guilty of a breach of official trust, punishable by fine or imprisonment, or both.

The Census (Ireland) Act (c. 6, I.) in the main follows the English Act, but differs from it (1) in requiring the religious profession of each person enumerated to be described in the census papers; (2) in not requiring the condition as to marriage to be stated; and (3) in authorising other particulars than those mentioned in the Statute itself to be inquired into. For these particulars reference must be had to the appendix to the 1892 report of the Commissioners appointed under the Census (Ireland) Act, 1890.

Colonies.—The Commonwealth of Australia Constitution Act (c. 12) enabled her late Majesty the Queen to proclaim the union of the people of New South Wales, Victoria, South Australia, Queensland, and Tasmania, "and also, if her Majesty was satisfied that the people of Western Australia"—whose agreement had recently been signified by a popular vote—"had agreed thereto, of Western Australia," in a Federal "Commonwealth of Australia." A Royal Proclamation of the union of all the six colonies, to commence from January 1st then next, was issued on September 17th, 1900, and published in the *London Gazette* of the following day.

The Act (which may, with great advantage, be compared with the successful British North America Act of 1867 and the abortive and expired South Africa Act of 1882) gives the new Commonwealth a Constitution in eight chapters, containing one hundred and twenty-eight articles amongst them. The legislative power is vested in a Parliament consisting of the King, represented by a Governor-General, a Senate, and a House of Representatives—the bi-cameral system being adopted, in analogy to that prevailing in every country of the world (except Greece) in which a House of popularly elected Representatives exists. Lord Hopetoun was appointed the first Governor-General. Her late Majesty had signified her intention that the Duke of York should open the first Parliament, and the Duke of Cornwall and York opened it accordingly, on the renewed request of his Majesty the King, during the progress of those felicitous visits to various centres in the British empire in paying which the now Prince and Princess of Wales passed more than half of the present year.

The Senate is to be ordinarily composed of six Senators for each State directly chosen by the people of the State voting as one electorate, the method of election to be as prescribed at some future date by the Commonwealth Parliament uniformly, but until then as prescribed by the House of Representatives of each State for the election of that House. Senators are chosen for six years and divided into two classes, of which

the first class retires at the end of the first three years and the second class at the end of the second three years. The place of a Senator becomes vacant by absence for two consecutive months without leave of the Senate. The quorum is one-third of the whole number, and questions are decided by a majority of votes. The House of Representatives is composed of members directly chosen by the people, and their number is as nearly as practicable twice the number of the Senators and varying with the population, it being specially provided, however, that at the first election twenty-three members were to be chosen for New South Wales, twenty for Victoria, eight for Queensland, six for South Australia, and five for Tasmania. The House of Representatives is to continue for three years and no longer, but may be sooner dissolved by the Governor-General. Till other provision is made by the Commonwealth Parliament, each State is to be one electorate, and the qualification of electors is to be that in force for each State. As to qualification of members, a member must be at least twenty-one years old and himself an elector or qualified to become such, and also a resident within the limits of the Commonwealth of three years' standing. He must also be a subject of the King, either natural-born or for at least five years naturalised.

A member of either House is disqualified for membership of the other, receives an allowance of £400 per annum, and is or becomes disqualified for membership by holding any office of profit under the Crown, or any pension payable out of the revenues of the Commonwealth, or having any pecuniary interest in any agreement with its public service otherwise than as a member of an incorporated company consisting of more than twenty-five persons. There is no express disqualification of women either as electors or members, and women, as they already possess the Parliamentary franchise in South Australia, are entitled to vote in that electoral area.

The powers of the Commonwealth Parliament are set out under thirty-nine heads, including powers as to

> Trade and commerce with other countries and among the States; bounties on the production or export of goods, but so that such bounties shall be uniform throughout the Commonwealth; quarantine; currency, coinage, and legal tender; weights and measures; copyrights, patents of inventions and designs and trade marks; naturalisation and aliens; marriage; divorce and matrimonial causes, and in relation thereto parental rights and the custody and guardianship of infants; invalid and old age pensions; the people of any race other than the aboriginal race in any State for whom it is deemed necessary to make special laws; immigration and emigration; the influx of criminals; external affairs.

The Parliament is also directed to fix the seat of government subject to the limitation that it must (1) be situate in New South Wales, and (2) be distant at least a hundred miles from Sydney. Money Bills are not to originate in the Senate, and appropriation Bills and taxing Bills are only to deal with appropriation and taxation. Disagreements between the two Houses, if consequent upon a Senatorial rejection of a Representative Bill,

may be followed by a simultaneous dissolution, and if after such dissolution the House of Representatives passes the proposed law and the Senate fails to pass it, the Governor-General may convene a joint sitting of the two Houses at which the measure may be carried by an absolute majority of the total number of both.

When a proposed law is presented to the Governor-General for the King's assent, he may either assent in the King's name, or withhold assent, or reserve the law for the King's pleasure; the King may disallow any law within one year from the Governor-General's assent; and a proposed law reserved for the King's pleasure is not to have any force unless within two years from the day on which it was presented to the Governor-General for the King's assent, the Governor-General makes known, by speech or message to each of the Houses of Parliament, or by proclamation, that it has received the King's assent.

The executive power is vested in the King, and exercisable by the Governor-General with the advice of a Federal Executive Council holding office during the Governor-General's pleasure, up to the number of seven sitting in one or other House of Parliament, and receiving amongst them £12,000 a year.

The judicial power of the Commonwealth is vested in a High Court of Australia, to consist of a Chief Justice and so many other judges, not less than two, as the Parliament prescribes, and in such other Courts as the Parliament creates. The judges are to be appointed by the Governor-General in Council (no qualification for judgeships by age, professional standing, or even nationality being named), and removable by him only on address from both Houses of Parliament in the same Session.

Appeal to the High Court is dealt with by s. 73, appeal from it by s. 74, both of them enactments not quite easy to understand, and to be read with the old Common Law rule that from every Court in every British colony there lies an appeal to the British Sovereign in Council, except so far as it is taken away or limited by express Statute. S. 73 gives the High Court jurisdiction to hear and determine, with such exceptions as the Parliament prescribes (not preventing any appeal from the Supreme Court of a State in which at the establishment of the Commonwealth an appeal lies from such Court to the King in Council), appeals from all judgments and sentences of any Court of any State from which at the establishment of the Commonwealth an appeal lies to the King in Council. S. 74 bars any appeal from the High Court to the King in Council upon any question as to the limits *inter se* of the constitutional powers of the Commonwealth and those of any State unless the High Court certify that the matter is proper for such appeal (in which case an appeal lies without further leave), but expressly declares that the Constitution shall not otherwise impair any right which the King may be pleased to exercise to grant special

right of appeal from the High Court to his Majesty in Council, adding, however, that the Parliament may limit the matters in which such leave may be asked, but that proposed laws containing any such limitation shall be reserved by the Governor-General for his Majesty's pleasure. A full review of the two sections and their effect will be found in Mr. A. R. Butterworth's article in the number for August, 1900, of the *Journal of the Society of Comparative Legislation.*

Uniform duties are to be imposed within two years from the date of the Act, but the Constitution does not prohibit a State from granting any aid to, or bounty on, mining for gold, silver, or other metals, nor from granting, with the consent of both Houses of the Commonwealth Parliament, any aid to, or bounty on, the production or export of goods. All State laws are to remain in force if consistent with the laws of the Commonwealth, but the laws of the Commonwealth are to prevail in case of inconsistency. The States are not to raise military or naval forces, or coin money, or make anything but gold and silver coin a legal tender for the payments of debts, and the Commonwealth is not to make any law for establishing any religion or imposing any religious observance or prohibiting the free exercise of any religion or religious test for qualification for office. New States may be admitted into the Commonwealth by the Parliament, and the Governor-General may be authorised by the King to appoint deputies. Lastly, the Constitution may be altered by law passed by an absolute majority of both Houses to be submitted in not less than two nor more than six months to popular vote, to be taken in such manner as the Parliament prescribes.

Mr. Hedderwick's Colonial Solicitors Act (c. 14, U.K.) (backed also by Sir J. Woodhouse, Sir A. Rollit, Mr. Warr, Mr. Helder, Mr. Lloyd-George, and Mr. Schwann) enacts that a colonial solicitor who has been in practice for not less than three years may, on giving due notice and proof of his qualifications and good character, and either on passing an examination or in certain cases without examination, and either after service of articles during a certain period or without such service, be admitted a solicitor in England, Scotland, or Ireland, or any of the three countries to the exclusion of either or both of the others, on payment of stamp duties and fees. The Act repeals prior Acts of 1857, 1874, and 1884 to a similar effect, and, like those Acts, requires an Order in Council not only to bring it into operation, but to fill in details. The Order may be made when his Majesty the King in Council is satisfied, "on the report of a Secretary of State," as respects a colonial Court—

(1) That its regulations respecting the admission of solicitors are such as to secure their proper qualifications and competency; and

(2) That by the law of the colony solicitors here will be admitted to be solicitors there, "on terms as favourable as those on which it is proposed to admit" them to be solicitors here.

The Act came into operation on January 1st last, and Orders in Council under it have been issued.

The Colonial Stock Act (c. 62, U.K.) abolishes, so far as loans effected before the passing of the Act are concerned, the necessity imposed by the Colonial Stocks Act of 1877 of stating in the declaration registered with the Imperial revenue authorities by colonial authorities issuing a loan that the revenues of the colony alone are reliable in respect of the stock and the dividend thereon, but does not in any way point to any change as regards the security for colonial loans. The Act also greatly increases the powers of trustees to invest in colonial stock. Before its passing, trustees could not invest in any such stock unless (as has of late years become frequently the case) they were expressly authorised by the instruments of trust to invest therein. From the long list of trustees' investments provided by the Trustee Act of 1893 all colonial stocks were excluded. The new Act provides that the securities in which a trustee may invest under that Act shall include any colonial stock registered in the United Kingdom "with respect to which there have been observed such conditions, if any, as the Treasury may by order notified in the *London Gazette* prescribe," and the Treasury is directed to keep and publish "in the London and Edinburgh *Gazettes*, and in such other manner as may give the public full information on the subject," a list of colonial stock in respect of which the provisions of the Act "are for the time being complied with." The Act passed on August 8th, and the Treasury conditions, which were made on December 6th following, were published in the *London Gazette* about a week afterwards. They are:

(1) That the colony shall provide by legislation for payment out of the colonial revenues of any sums payable to stockholders under any judgment or order of a Court of the United Kingdom;

(2) That the colony shall satisfy the Treasury that adequate funds will be available in the United Kingdom to meet any such judgment or order; and

(3) That "the colonial Government shall place on record a formal expression of their opinion that any colonial legislation which appears to the Imperial Government to alter any of the provisions affecting the stock to the injury of the stockholder, or to involve a departure from the original contract in regard to the stock, would properly be dissolved."

Copies of the order imposing these conditions may be obtained from the King's printers. A subsequent *Gazette* announced that Canada, in respect of six loans, and New Zealand, in respect of three, have complied with the conditions.

Companies.—The Companies Act (c. 48, U.K.) is the legislative outcome of the report in 1895 of a Board of Trade Committee appointed so far back as 1894 and presided over by Lord Davey, which presented a draft Bill, moulded into the Act, with not much material amendment, after protracted

and careful consideration by the House of Lords and careful consideration by the House of Commons. The Act repeals only four sections wholly and three partially of the Acts of 1862 and 1867, and leaves the remaining Acts untouched. The chief subjects dealt with are the appointment and qualification of directors, allotment of shares, and commencement of business, underwriting, contents of prospectus, the first meeting, the registration of mortgages, the annual summary accounts, and the appointment, remuneration, and duties of auditors. The Act applies to existing as well as to future companies, except where it is expressed to apply to future companies only, but in no case applies to the railway and other statutory companies outside the great Act of 1862. The following is an account of the Act under its chief heads :—

Directors.—No person may be appointed a director by articles of association, or named director by a prospectus, unless before registration of the articles or publication of the prospectus he has consented in writing to act, and either signed the memorandum of association for a number of shares not less than his qualification shares, if any (for there will still be no statutory obligation to take any shares except as provided by articles), or signed and filed with the Registrar of Joint Stock Companies a contract in writing to take from the company and pay for his qualification shares, if any, and a list of consenting directors is to be delivered to the Registrar.

The foregoing provisions do not apply to existing companies or to private companies, or to any prospectus issued by a company more than one year after becoming entitled to commence business. But, in every case in which a specified share qualification is required, every unqualified director must obtain his qualification within two months after appointment or such shorter time as may be fixed by the company, under pain of vacating his office and becoming liable to a fine of £5 for every day he acts.

Allotment.—"There is no more frequent cause of disaster," observed Lord Davey's Committee, "than allotment upon insufficient capital. Upon this the opinion of experienced persons is unanimous." No allotment of any share capital of a company offered to the public for subscription may therefore be made unless there has been subscribed either

(1) The amount fixed by the memorandum or articles and named in the prospectus as the minimum on which allotment may be proceeded to ; or

(2) The whole share capital offered.

If these and other conditions be not complied with at the end of forty days after prospectus issued, the money of the subscribers is to be returned to them without interest, the directors (with exceptions for proved innocence) becoming liable to repay it with interest at the rate of five per cent. per annum after the expiration of forty-eight days. Any waiver of these conditions is to be void, but the conditions do not apply to any allotment subsequent to the first.

Underwriting and Brokerage.—The power of any company "to pay such brokerage as it has been heretofore lawful for a company to pay," and commissions, discounts, and the like are legalised to the following extent and no further :—

> Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount of rate per cent. of the commissions paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus, and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

"Save as aforesaid" no company is to apply any of its shares or capital money either directly or indirectly in payment of any commission or allowance to any subscriber for shares.

Prospectus.—The term "prospectus" means any prospectus, notice, circular, advertisement, or other invitation offering to the public for subscription or purchase any shares, debentures, or debenture stock. Every such prospectus is to be dated, signed by every director or proposed director, or his agent authorised in writing, and filed with the Registrar of Joint Stock Companies, and state that it has been so filed. Besides an express waiver of the conditions being expressly declared void, any allotment in contravention of them is voidable at the instance of the applicant within a month after the first meeting of the company, and any contravening director becomes liable to compensate both the company and the allottee for any injury resulting from the contravention. Any future company, unless it be a private one, may neither commence business nor borrow money unless

(1) Shares payable in cash have been allotted up to at least the amount of the minimum subscription ;

(2) Every director has paid on all shares for which he is liable to pay in cash "a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription ; and

(3) A statutory declaration that these conditions have been complied with has been filed."

A contravention of these provisions—which, however, are not to prevent the simultaneous offer of both shares and debentures—is to entail liability to a daily fine of £50 upon the person responsible. In order that investors may have an opportunity of knowing who their co-partners are, a detailed return of all allotments is to be filed with the Registrar within a month after allotment, showing, amongst other things, the history of shares allotted otherwise than for cash.

S. 10 of the Act, which takes up two pages of the official copy and three of the Continuation Volume of *Chitty's Statutes*, replaces in eight

sub-sections, of which the first is sub-divided into thirteen paragraphs, the short but much-vexed s. 38 of the Act of 1867—passed in a time of commercial stress and panic—which enacted that every prospectus not stating every contract should be deemed fraudulent. The main particulars which must now be stated in every prospectus by or on behalf of a company or by or on behalf of every person who is or has been engaged or interested in the formation of a company, are these:—The contents of the memorandum of association, the amount of a director's qualification, if any, the minimum subscription on which allotment will be proceeded to, the amounts (1) of commission paid or payable, (2) of preliminary expenses, and (3) of payments to promoters, the dates of and parties to every material contract except ordinary business contracts and contracts more than three years old, and full particulars of the interest of every director in the promotion of the company, "with a statement of all sums paid or agreed to be paid to him in cash or shares by any persons either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company." The section applies to existing companies with a few unimportant savings, and in newspaper advertisements the obligation to specify the contents of the memorandum of association is dispensed with, but the ingenious waiver clauses which have so long played a doubtful part in Company Law are swept away for ever, as far as words can sweep them, as follows:—

> Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus shall be void.

It was but in December, 1899, that the greatest authority on the law of companies, in condemning—for the first time judicially—a "tricky" waiver clause in the Court of Appeal, expressly guarded himself from the condemnation of honest ones. The unhappy language of the Parliament of 1867, which is as absurdly wide as it is absurdly narrow, no doubt occasioned, if not necessitated, devices of this kind, and the judicial protection of the honest waiver clause has been indirectly adopted by the Legislature, though in future it will have to be asked, not so much whether a waiver clause was or was not honest, as whether the precise conditions of s. 10 of the Companies Act, 1900, have been complied with or not. The honest director, or other person responsible for a prospectus not complying with the multitudinous requirements of the new Act, is not to incur any liability by reason of the non-compliance if he proves (1) that he was not cognisant of any matter not disclosed, or (2) that the non-compliance arose from an honest mistake of fact, while the burden of proof is shifted in the case of non-disclosure of the character of a director's interest. In such a case no liability is to be incurred unless knowledge of

the matters not disclosed be proved. Subject to the above exceptions, the contravener is left to the tender mercies of "the general law" (see *e.g.*, the Directors' Liability Act of 1890), "apart from this section"—which provides no special penalties for non-compliance with it—with the legal result, it is conceived, of rendering the offender liable, as for a Common Law misdemeanour, to be punished upon conviction on indictment by imprisonment or fine, or both, limited in extent and amount by the discretion only of the Court trying the indictment.[1]

Statutory Meeting.—Every future company must, within three months after becoming entitled to commence business, hold a meeting of its members, who are to have had forwarded to them at least seven days before the meeting a report of the numbers of shares allotted, distinguishing shares allotted for cash and shares not so allotted, an abstract of receipts and payments, "the particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification"; and a list of the names and addresses of the members and the number of shares held by each member is to be produced at the commencement of the meeting and open to inspection by members during its continuance. This is, in theory, one of the most important, and in practice may become the most useful, of the provisions of the Act. S. 39 of the Act of 1862, which it takes the place of, provided for the holding of a statutory meeting within four months after the registration, but was silent on all the points now brought into prominence, with the inevitable consequence, that "statutory meetings" have been hitherto mostly formal. Shareholders now will have every opportunity of testing the value of new investments. It may perhaps be suggested that all speakers at statutory meetings might with advantage state their names and the amounts and nature of their holdings, and even, in some cases, whether they are beneficial or fiduciary owners of them—the Companies Act forbidding a company to recognise trusts upon its register.

Extraordinary Meetings.—The directors of all companies, existing as well as future, become bound, notwithstanding anything in any regulations of a company, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls due have been paid, to call an extraordinary general meeting, the requisitionists themselves or a majority of them in value being empowered to convene the meeting in event of the directors not convening it within twenty-one days after deposit of the requisition at the office of the company. It is believed that varying provisions of a similar character to these are more often than not to be found in existing articles of association, which, it is conceived, may operate in addition to, though not in contravention of, them.

Registration of Mortgages.—Future mortgages and charges, whether by

[1] See *Reg.* v. *Dunn*, 12 Q.B. 1041; *Reg.* v. *Hall* (1891), 1 Q.B. 747.

existing or future companies, of almost every kind (including the mortgage of uncalled capital), become void against liquidators and creditors unless filed with the Registrar within twenty-one days after their creation, and a register is to be kept open to inspection by any person, stating the date of creation, the amount secured, and the names of the parties entitled, special provisions being made for the issue of a series of debentures, the holders of which rank *pari passu*. The companies become bound to register and consequently to supply the Registrar with the necessary particulars, but any mortgage or charge requiring registration may be registered on the application of any person interested therein, and copies of all instruments requiring registration are to be kept at the office of a company, there open to inspection by the members and creditors of the company. This greatly extends—but for the future only—a still unrepealed provision of the Act of 1862 by which registers of mortgages open to inspection are directed to be kept by the Registrar of Joint Stock Companies, inasmuch as that provision allows inspection only by existing members or creditors. The substituted provision allows inspection in anticipation of future as well as in protection of existing investments, such, for instance, as before now have been made by a shareholder who discovers when it is too late that the principal creditor of his company is the vendor who sold his business to it and took debentures in payment.

Annual Summary.—The annual summary of a company's position and membership, which all companies having a capital divided into shares are directed by the Act of 1862 to forward to the Registrar of Joint Stock Companies, is directed to contain, in addition to the numerous particulars already required, (1) "the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act or which would require registration if created after the commencement of this Act, and (2) the names and addresses of the directors."

Audit.—Every company, whether existing or future, becomes bound to appoint an auditor or auditors at each annual general meeting. If no appointment be then made, the Board of Trade may appoint an auditor on the application of any member. The reports of the auditors are to be read before the companies in general meeting. Similar provisions, varying amongst themselves, are more often than not to be found in articles of association, and these may, it is conceived, supplement the Act, but cannot contravene it. Except in the case of banking companies, the Statute Law has not hitherto required any audit.

Conversion of Stock into Shares.—The Act of 1862 allows the conversion of shares into stock. The new Act allows a reconversion of stock into shares—a provision which may possibly be found more useful in inducing the employés of a company to become partners with the shareholders than the power of offering small limited portions of stock.

County Courts.—The County Courts (Investment) Act (c. 47, E.) regulates

the investment of money paid into court and ordered by the judge to be invested for the benefit of any infant or lunatic.

Education.—The Elementary Education Act (c. 53, E.), well described by the Duke of Devonshire, in moving its second reading in the House of Lords as Lord President of the Council, as an omnibus measure, deals with seven distinct subjects. "Average attendance" for the purpose of the fee grant under the Act of 1891 is to be calculated in accordance with the minutes of the Board of Education for the time being, instead of the minutes of 1891, so as to invest the calculation of "average attendance" with greater elasticity. Poor Law guardians are empowered to contribute towards such of the expenses of "providing, maintaining, or enlarging" any public elementary school (whether voluntary or board) as are incurred in respect of pauper scholars. Parishes having school boards are exempted from contributing to the expenses incurred by any district council in the education of blind and deaf children. Local authorities who procure the commitment of a child to an industrial school may pay the expenses of the conveyance of the child to and from the school. The joint managers of joint industrial schools may be treated as a single school board in respect of audit. By-laws requiring compulsory school attendance are to apply to children under fourteen instead of children under thirteen, the maximum penalty for breach of them is raised from five to twenty shillings, and the sanction of them by the Education Board is substituted for that of the Sovereign in Council. Finally, three hundred and fifty attendances are substituted for two hundred and fifty as the standard of due attendance at a certified efficient school.

The Intermediate Education (Ireland) Act (c. 43, I.) enables the Intermediate Education Board for Ireland to apply the funds placed at the disposal of that Board in the manner provided by rules to be made by the Board with the approval of the Lord-Lieutenant, "for the purpose of carrying out the recommendations contained in the general summary of the report of the Commissioners appointed by the Lord-Lieutenant to report upon the system of intermediate education in Ireland," dated August 11th, 1899, and presented to both Houses of Parliament. The Act also empowers the Board to appoint inspectors and grant superannuation allowances, and increases the strength of the Board from seven persons to twelve.

Executors.—Mr. T. Shaw's Executors (Scotland) Act, 1900 (c. 55, S.) (backed also by Mr. Renshaw, Mr. Ure, Mr. Orr-Ewing, Mr. Coldwell, and Mr. Dewar), contains nine sections. Executors nominate are (subject to express provisions otherwise) invested with all the powers and made subject to all the liabilities "which from time to time gratuitous trustees have or are subject to under the Trusts (Scotland) Acts, 1861 to 1898, or this Act, or any Act amending the same, and otherwise under the Statute and Common Law of Scotland." Where a testator has not appointed an executor, or if an executor cannot act, "testamentary trustees of such testator, original or assumed, or appointed by the Supreme Court (if any), failing whom any general

disponee or universal legatory or residuary legatee" are to be his executors nominate. Where confirmation is granted in favour of more executors dative than one, the powers conferred to it are to accrue to the survivors or survivor, and while more than two survive, the majority is to be a quorum, and all confirmations are to be accompanied by inventories. The Act also deals with the transmission of trust funds by the executors of the sole or last surviving trustee and the grant of confirmation *ad non executa*, designates officers before whom oaths may be taken, and facilitates the grant of confirmations under the Intestates' Widows and Children (Scotland) Act, 1875, and other enactments regulating confirmation in the case of estates of small value.

In connection with this subject, a contributor to a *Journal of Comparative Legislation* may venture to direct attention to the fact that the Scots law of succession is more in accordance with modern views than the law of other parts of the British Empire. Alone in Europe the laws of England and Ireland allow a testator to leave all his personal property to a stranger and his wife and children penniless, and unless it has been altered by Statute (as it has been in many parts of the United States), this is the law of all our colonies and the law of the United States of America.

Intoxicating Liquors.—The Inebriates Amendment (Scotland) Act (c. 28, S.) enables county and town councils to impose rates and borrow money for the purpose of defraying expenditure under the Inebriates Act, 1898. It also allows the committal to prison for seven days of "every person who in any road, street, or public place or building to which the public have access commits the offence of behaving while drunk in a riotous or disorderly manner," and enacts that such an offence "shall be deemed to be an offence mentioned in the first schedule to the Inebriates Act, 1888"—with the result that the offender, if a habitual drunkard convicted at least three times within the twelve previous months of certain similar offences connected with drunkenness, will be liable "on conviction" to be detained for not more than three years in a certified inebriate reformatory."

The Beer Retailers' and Spirit Grocers' Retail Licences (Ireland) Act (c. 30, I.) enables licensing justices in their free and unqualified discretion either to refuse a certificate for any new excise or other licence for retail of beer or spirits to be consumed off the premises on any ground appearing to them to be sufficient, or to grant the same to such persons as they in the exercise of their statutory powers and in the exercise of their discretion deem fit and proper; adding, that the justices may "hear and act upon any objection and any evidence either in support thereof or in aid of the application made or tendered by any resident or owner of property" wherein the premises proposed to be licensed are situate.

Land.—The Land Registry (New Buildings) Act (c. 19, E.) enables the Commissioners of Works to acquire certain lands and buildings for the purpose of the Land Registry Office "and such other public offices as

may be determined," the spending power of the Treasury being limited to £265,000.

The Land Charges Act (c. 26, E.) transfers to the Land Registry Office, by virtue of an order of the Lord Chancellor made shortly after its passing, the business of the Registrar of Judgments hitherto conducted in the central office of the Supreme Court, with a saving, however, for Scotch and Irish judgments. It is also provided that no judgment shall operate as a charge on land until a writ or order to enforce it has been registered in the manner specially provided by the Land Charges Registration and Searches Act, 1888, which Statute is to a slight extent repealed, together with eight other Statutes repealed to greater extent.

Loans for Public Works.—The Public Works Loans Act (c. 36, U.K.) appoints Sir H. Barnard, Sir T. Salt, Mr. S. S. Gladstone, the Hon. Henry Gibbs, Sir E. Birkbeck, Mr. E. Norman, Mr. A. O'Connor, Q.C., the Hon. Sir C. Fremantle, the Hon. Evelyn Hubbard, Mr. B. G. O. Smith, Mr. F. W. Buxton, Mr. E. H. Loyd, Mr. F. Greene, Mr. H. A. D. Seymour, Col. Lockwood, Lord Hillingdon, the Hon. James Hozier, and Mr. D. Lloyd-George (eighteen Commissioners in all) to be Commissioners under the Public Works Loans Act, 1875, for a further period of five years. Their term of office would otherwise have expired in April, 1901. The Act of 1875, consolidating a number of Acts from 1853 downwards, enables Commissioners to lend large sums of public money for the purposes of harbours and other purposes therein specified, and the Commissioners are by the new Act empowered, though not required, to lend an additional seven millions or any less sum for those purposes.

Local Government.—Sir J. Dorington's County Councils Elections Amendment Act (c. 13, E.) (backed also by Lord E. Fitzmaurice, Mr. Jeffreys, Mr. Broadhurst, Mr. Hobhouse, Mr. Humphreys-Owen, and Mr. Strachey) enacts that in any year which is not the year of election of county councillors the day of election of chairman and of holding a quarterly meeting may be such day of March, April, or May as the county council shall determine, instead of one of the days of March.

Mr. Pretyman's District Councillors and Guardians (Term of Office) Act (c. 16, E.) (backed also by Sir J. Dorington, Mr. Cripps, Mr. Price, and Mr. Trevelyan) empowers county and county borough councils to rescind any of their orders, made or to be made, with respect to the retirement of members of urban or rural district councils or of boards of guardians, the allusion being to those provisions of the Local Government Act, 1894, under which all these ladies and gentlemen may by order of the county councils, made on certain requests, be compelled to retire all together on April 15th in every third year of office, instead of in the proportion of one-third of their number at the end of each year.

Mr. Asher's Town Councils (Scotland) Act, 1900 (c. 40, E.) (backed also by Sir H. Maxwell, Mr. T. Shaw, Dr. Clark, Mr. Parker Smith, Mr. Cross,

Mr. Gordon, and Mr. Dewar), to "consolidate and amend the law relating to the election and proceedings of town councils in Scotland" contains one hundred and seventeen sections and five schedules, and is by far the longest Statute of the Session. Thirteen Acts wholly and four Acts partly, from an Act of 1823 "for regulating the mode of accounting for the common good and revenues of the royal burghs of Scotland" to the Local Government (Scotland) Act, 1894, inclusive, are repealed. In this place it may be sufficient to notice that one-third of a town council is a quorom ; that only men may be councillors ; and that the electors are all Parliamentary voters, all persons entitled to be such, but for change of residence, or residence more than seven miles off, and "all peers and women who, in respect of the ownership or occupancy of premises within the municipal boundary, possess the qualifications entitling male commoners to vote in the election of a member of Parliament ; provided that a wife shall not be registered or entitled to vote in respect of any premises in respect of which her husband is registered."

There are four Irish Local Government Acts—the Public Health (Ireland) Act (c. 10, I.), the County Surveyors (Ireland) Act (c. 18, I.), the Local Government (No. 2) (*sic*) Ireland Act (c. 41, I.), and the Local Government (Ireland) Act (c. 63, I.). The Public Health Act allows the Local Government Board, with the consent of the rural district council, to alter any area of charge theretofore determined by order of that Board as the area on which there should be chargeable any special expenses leviable off a contributory place in their district. The County Surveyors Act allows any person to be appointed county surveyor whose qualifications have been certified by the Civil Service Commissioners. The Local Government (No. 2.) Act allows the Local Government Board by Provisional Order confirmed by Parliament to annul or vary "either generally or on the application of the council of any particular county as respects that county, any provision in the Local Government (Procedure of Councils) Order, 1889"; and the Local Government (Ireland) Act (c. 63, I.) amends seven sections of the Local Government (Ireland) Act, 1888, and three articles of the schedule to the Local Government (Application of Enactments) Order, 1898, the Act of 1900 being directed to come into operation on April 1st, 1901, "or on such other day not more than twelve months earlier or later as the Local Government Board may appoint either generally or with reference to any particular provision of the Act"—an elastic direction very similar to that of the English Local Government Act 1888, s. 109, and the London Government Act, 1899, s. 133.

London.—The London County Council Electors' Qualification Act (c. 29, E.) of Mr. Loder (backed also by Mr. Whitmore, Mr. Goulding, Mr. Boulnois, Mr. W. F. D. Smith, Mr. J. Burns, Captain Jessel, and Sir George Fardell), "to assimilate the County Council and Borough Council franchise in London," will have the practical effect (so stated Mr. Loder in the

House of Commons) of adding about 100,000 votes to the County Council register, by the enactment that a parochial elector shall be entitled to vote at the election of a county councillor for the Administrative County of London in the same manner as a county elector and subject to the same provisions.

Mines.—The Mines (Prohibition of Child Labour Underground) Act (c. 21, U.K.) of Sir Charles Dilke (backed also by Sir J. Joicey, Sir J. Pease, and Sir A. Hickman) prohibits the employment in any mine below ground of any boy under the age of thirteen, the previous prohibition having been limited to the age of twelve only; but the new limit does not apply to any boy lawfully employed in any mine below ground before the passing of the Act on July 30th, 1900.

Money-Lending.—The Money-Lenders Act (c. 51, U.K.), which is founded on a very severe report of the House of Commons Committee of 1898,[1] defines a money-lender as including "every person whose business is that of money-lending, or who advertises or announces himself or holds himself out in any way as carrying out that business." The definition, however, does not include pawnbrokers or registered friendly, building, or loan societies or corporations empowered by special Act of Parliament to lend money, or "any person *bonâ fide* carrying on the business of banking or insurance or *bonâ fide* carrying on any business not having for its primary object the lending of money, in the course of which, and for the purposes whereof, he lends money," or any corporation exempted from registration under the Act by the Board of Trade, pursuant to regulations of that Board. The Act came into operation on November 1st, 1900. Money-lenders within the meaning of the Act are subjected (1) to the liability to have their contracts judicially varied in the interest of borrowers, and (2) to the obligation to register themselves as professional money-lenders. Where a borrower is sued by a money-lender for a loan, and there is evidence which satisfies a Court either that the interest or that the charge for expenses is excessive, *and* that, *in either case*, the transaction is harsh and unconscionable, "or is otherwise such that a Court of Equity would give relief" (as, *e.g.*, where the borrower had no independent professional assistance), the Court may reopen the transaction and relieve the borrower from payment of any sum in excess of that adjudged to be reasonable, may order the money-lender to repay any such excess, may set aside or alter any security or

[1] For extracts rom the report of this Committee, which unanimously came to the conclusion "that the system of money-lending by professional money-lenders at high rates of interest" was productive of crime, bankruptcy, unfair advantage over other creditors of the borrower, extortion from the borrower's family and friends, and other serious injuries to the community, and which stated that "although your Committee are satisfied that the system is sometimes honestly conducted, they are of opinion that only in rare cases is a person benefited by a loan obtained from a professional money-lender and that the evil attendant upon the system far outweighs the good," see the 1900 Continuation of *Chitty's Statutes*, at p. 130.

agreement, and if the money-lender has parted with the security, may order him to indemnify the borrower, who on his side may also initiate proceedings and thereby obtain the same judicial relief as if he had waited to be sued. If the money-lender essays to prove for his loan in bankruptcy, he may be met by an exercise of similar judicial powers by the bankruptcy judge. None of these provisions may be construed to affect "the rights of any *bonâ fide* assignee or holder for value without notice," but with this single exception all the additions to the main provisions of the Act tell in favour of the borrower rather than against him.

Registration of the money-lender in his own or usual trade name and of the address or addresses at which he carries on business is to be effected at an office provided by the Inland Revenue Commissioners, who may, subject to the approval of the Treasury, make regulations as to registration, the particulars to be registered, and inspection of the register. Failure to register or lending without registration is to entail a liability to a fine of £100, summarily recoverable, any second or subsequent conviction entailing a liability to three months' imprisonment with hard labour, but a prosecution for merely failing to register is only to be instituted with the consent of a law officer of the Crown. The first registration, which is compulsory, will cease to be effective at the end of three years. Subsequent renewals, which will be permissive, will have effect for three years from the date of the renewal. Any money-lender fraudulently inducing or attempting to induce any person to borrow money of him is declared to be guilty of a misdemeanour and liable on indictment to two years' imprisonment with hard labour, or to a fine of £500, or both. Finally, where in proceedings under the Betting and Loans (Infants) Act, 1892, for circularising invitations to borrow it is proved that the invitation was sent to an infant, "the person charged" (who need not be a "money-lender" within the Act) is to be deemed to have known that the person to whom the document was sent was an infant, unless he proves that he had reasonable ground for believing the infant to be of full age.

As may be seen from a perusal of Mr. Harrison's important article on "Foreign Usury Laws" in the July, 1899, number of this Journal, the new Act is in harmony with much of the modern foreign legislation upon its subject. At the beginning of the nineteenth century, so we learn from the article, scarcely any country allowed contracting parties to stipulate for more than a definite rate of interest. At the beginning of the twentieth legal limits on the rate of interest have to a very considerable extent disappeared, and usury in the sense of money-lending calling for regulation by law means, speaking widely, exploitation resulting in an unconscionable bargain.

Regulations of great importance were issued by the Inland Revenue Commissioners in September, 1900, giving the money-lenders one month, from November 15th, 1900, and no more, to register in, and establishing registries in London, Edinburgh, and Dublin, in each of which an

alphabetical index is to be kept, for public inspection, of all money-lenders who have made returns for registration; and Board of Trade regulations as to the exemption of bodies corporate from the provisions of the Act were issued in the following month.[1]

Monuments.—The Ancient Monuments Act (No. 34, E.S.) of Lord Balcarres, which was backed also in the House of Commons by Sir J. Brunner, Mr. Carson, Mr. (now Sir Richard) Jebb, Sir J. Stirling Maxwell, and Mr. Bryce, and was piloted through the House of Lords by Lord Avebury, defines a monument as meaning "any structure, erection, or monument of historic or architectural interest," and unless, which is doubtful, the word "ancient" can be read into this definition from the short title, its application is not confined to old ruins. It says that "where the Commissioners of Works are of opinion"—an expression of unrestricted power—"that the preservation of any monument is a matter of public interest by reason of the historic, traditional, or artistic interest attaching thereto, they may, at the request of the owner thereof, become the guardians thereof." County councils are also empowered either to purchase or, at the request of the owners, become the guardians of monuments and to maintain them out of county funds. Both the Commissioners of Works and the county councils may receive voluntary contributions towards maintenance and management, and the public are to have access to all monuments of which either the Commissioners of Works or any county council are the owners or guardians, "but where they are guardians only, with the consent of the owner of the monument, at such times and under such regulations as the Commissioners or council shall prescribe." The Act is to be construed as one with the Ancient Monuments Act, 1882, which comprised only "the group of stones known as Stonehenge" and twenty-eight other specified monuments in England, "a group of remains and pillars on a haugh at Clava on the banks of the Nairn," and twenty others in Scotland, and "the stone monument at Ballyna," and eighteen others in Ireland—with power, however, to the Queen in Council to add to any of the three lists. The wide general terms of the new Act, which does not apply to Ireland, that sister country having already a comprehensive Statute of her own in the Ancient Monument Protection (Ireland) Act, 1892, are not a little surprising. There is no exception for ecclesiastical buildings, the only expressed exception being that the Act shall not authorise the Commissioners of Works to become the guardians of any structure which is occupied as a dwelling-place by any person other than a person employed as the caretaker thereof and his family. An incorporated incorporation of the Land Clauses Act has the effect of enabling tenants for life, corporations, and other owners under disability to sell their monuments, and the comprehensive definition of "owners" in the incorporated

[1] For the Inland Revenue and Board of Trade regulations, see the 1900 Continuation of *Chitty's Statutes*, at pp. 126, 169.

Act of 1882 includes beyond doubt ecclesiastical owners of every kind, so that it would be hard to say that there is not a technical authority given to effect the sale of Westminster Abbey.

Parliamentary and Municipal Elections.—Incredible as it may seem, the Ballot Act of 1872 is temporary only, and has had to be annually renewed since 1880, when the seven years for which it was originally enacted came to an end.

The numerous Corrupt Practices Acts are also of a temporary character, and so is the Parliamentary Elections (Returning Officers) Act of 1875, with its three amending enactments. The annual Expiring Laws Continuance Act (c. 37, U.K.) directs that eighty temporary Acts, including these all-important enactments, "shall be continued until December 31st, 1901, and shall then expire, unless further continued."

Poor Law.—The Poor Removal Act (c. 23, E.I.), which passed through both Houses of Parliament without amendment, confers on Irish paupers that status of irremovability by five years' residence in England which the Union Chargeability Act of 1865, extending the less liberal provisions of Acts of 1846 and 1861, confers on English paupers by five years' parochial residence, the law now being that "a person who has resided continuously for five years in England shall not thereafter be removable to Ireland under the Acts" (see, *e.g.*, the Poor Removal (Ireland) Act, 1864) "relating to the relief of the poor." Moreover, where a pauper is removable from England to Ireland under those Acts, boards of guardians may agree that, instead of being removed, he "shall be maintained by the guardians of the union from which he is removable at the expense of the union to which, if removed, he would be chargeable."

The Poor Relief (Ireland) Act (c. 45, I.) abolishes, in the case of relief to a child or a lunatic, a prohibition of a Poor Relief Act of 1847 from giving relief from the rates of a union to a person not within the union, and also allows, under the authority of a Local Government Board certificate, any quantity of land which may be acquired under the Poor Relief Acts, 1838 to 1892, to be exceeded.

Railways.—The Railways Employment (Prevention of Accidents) Act (c. 27, U.K.), which is founded on the report of a Royal Commission, selects twelve subject-matters of railway employment, of which lighting of stations during shunting after dark, working of trains without brake-vans, and protection of men relaying or repairing a permanent way appear to be the most important, and empowers the Board of Trade to make such rules as they think fit with respect to any such subjects, and also, after communicating with the railway company and giving them a reasonable opportunity of reducing or removing the danger or risk, with respect to any other operation of railway service which the Board consider to be avoidably dangerous. In the case of rules of either kind, notice must be given of the place where copies of their drafts may be obtained, and

of the time, not being less than one month, within which objections will be considered by the Board, with the right of a dissatisfied objector to refer the question in dispute to the Railway and Canal Commissioners, both the Board and the Commissioners being bound to have regard, amongst other matters, to the question whether the requirements of any rule objected to "would materially interfere with the trade of the country or with the necessary operation of the railway company." A specific order or direction may be made or given in the place of the general rules, and rules may be rescinded, on application by any person affected, after having been in operation for at least more than three months, any such application, if made within eighteen months, to be referable to the Railway Commissioners if the Board of Trade decline to entertain it. Contravention of a rule is punishable by a fine of £50, or £10 a day in the case of a continuing offence, the convicted offender having, however, the right of appeal to quarter sessions. Debentures or debenture stock ranking *pari passu* with existing issues and bearing interest at a rate not exceeding five per cent. per annum may, under the superintendence of the Board of Trade, be issued to meet any expenses attributable to rules under the Act which would be properly chargeable to capital account.

Revenue.—The Finance Act (c. 7, U.K.) raised the 4*d.* duty on tea and the 8*d.* income tax to 6*d.* and 1*s.*, and considerably increased the duties on tobacco, beer, and spirits. The cigar duty, for instance, was raised from 5*s.* to 5*s.* 6*d.*, the Cavendish duty from 3*s.* 10*d.* to 4*s.* 4*d.*, and the general manufactured tobacco duty from 3*s.* 5*d.* to 3*s.* 10*d.* per pound, and the increase of the duties on spirits and beer applies both to Customs and Excise duties. There was also a suspension of the sinking fund created in 1887, and a suspension of payments on capital of certain terminable annuities. All these amendments were temporary only, that as to the tea, tobacco, beer, and spirit duties running from March 6th, 1900, last to August 1st next, and that as to income tax and the National Debt from April 6th, 1900, to April 5th, 1901, the Act, which received the Royal Assent on April 9th, being retrospective, as is usual with Finance Acts. Temporary also, though possibly recurring—for it applies to all future wars as well as to the present one—was the power given to the Treasury, "on the recommendation of the Secretary of State or of the Admiralty, as the case requires," to remit all death duties up to a limited amount on property passing to the widow or descendants of any person dying "from wounds inflicted, accident occurring, or disease contracted" while on active military or naval service against an enemy after October 11th, 1899. The official power of remission is limited to £150 in any one case, and to estates valued for estate duty at £5,000 or less, the rate of duty on estates of a value between £1,000 and £10,000 being three per. cent. It may be observed that an old Stamp Act of 1815 exempts from all stamp duties the probate of the will of any common seaman, marine, or soldier

who shall be slain or die in the service of the Sovereign, and that the Wills Act of 1837, repeating a provision of the Statute of Frauds passed more than two hundred years ago, allows any soldier on active service to dispose of his personal estate as he might have done before the passing of that Act—that is, with very much less formality than that required from ordinary testators.

Other amendments are permanent, and one of them is of extreme importance. The Act of 1894, by allusive legislation of unparalleled ineptitude, had made gifts within twelve months of the donor's death dutiable. The High Court had held that the charging words were strong enough to include the common occurrence of a succession accelerated by the surrender of a settled life interest by a life tenant to his successor, but this was in a case where a life tenant died more than twelve months after the surrender of the life interest had been effected, and the reversing judgments both of Court of Appeal and House of Lords left the dutiability expressly doubtful in cases where a life tenant died less than twelve months after the surrender. The High Court declared for dutiability in such cases, the Court of Appeal against it. The new Act has now cut a knot which may never be judicially untied by declaring for dutiability in case of death within twelve months, but in such case only as follows, in s. 11:—

> In the case of every person dying after March 31st, 1900, property, whether real or personal, in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased, shall for the purpose of the Finance Act, 1894, and the Acts amending that Act, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered, assured, divested, or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion in such property, unless that surrender, assurance, divesting, or disposition was *bonâ fide* made or effected twelve months before the death of the deceased, and *bonâ fide* possession and enjoyment of the property was assumed thereunder immediately upon the surrender, assurance, divesting, or disposition, and thenceforward retained to the entire exclusion of the person who had the estate or interest limited to cease as aforesaid, and of any benefit to him by contract or otherwise.

Other amendments of the Act of 1894 are these: Aggregation for the purpose of duty estates passing to indifferent persons or to the same person in different ways was one of its main features, but it excluded from aggregation two classes of property, the first being that in which the deceased never had an interest, and the second that which, under a disposition not made by the deceased, passes on death to any one except a wife, husband, ancestor, or descendant. All property in the second class, except an expectancy *bonâ fide* sold, will now be aggregated for duty purposes. It is also provided that fractions are no longer to be excluded (as they have been since 1896) in reckoning up rates and amounts of estate duty, and that

the Inland Revenue Commissioners may (though they will not become bound to) accept unsworn statements in correction of affidavits by executors and others.

The War Loan Act (c. 2, U.K.), under which the number of applications of investors to become national creditors was 39,800 (of whom more than 30,000 applied for allotments between £100 and £1,000) and the total amount applied for was £335,500,000, authorised borrowing by a special War Loan up to the amount of £35,000,000 for the service of the year ending on March 31st, 1901, and the Supplemental War Loan Act, (c. 61, U.K.) authorised borrowing for the same service up to the amount of £13,000,000 more.

Shipping.—The Merchant Shipping (Liability of Shipowners and others) Act (c. 32, U.K.) of Sir D. Currie (backed also by Mr. C. McArthur, Sir Francis Evans, Mr. Warr, Sir C. Cayzer, Colonel Denny, Sir J. Leng, and Mr. W. F. Lawrence) extends to all loss or damage caused to property of any kind by improper navigation "without their actual fault or privity," the limitation of the liability of shipowners (to £8 per ton of the ship's tonnage) set by s. 503 of the Merchant Shipping Act, 1894, in respect of loss of or damage to ships, goods, or other things. Moreover, in spite of the protests of the Lord Chancellor and Lord Alverstone that the Bill embodied an arrangement between shipowners and dock authorities to limit their liability at the expense of the general public, the Act provides that—

> The owners of any dock or canal or a harbour authority or a conservancy authority . . . shall not, where without their actual fault or privity any loss or damage is caused to any vessel or vessels, or to any goods, merchandise, or other things whatsoever on board any vessel or vessels, be liable to damages beyond an aggregate amount not exceeding £8 for each ton of the tonnage of the largest registered British ship which at the time of such loss or damage occurring, is, or within the period of five years previous thereto has been, within the area over which such dock or canal owner, harbour authority, or conservancy authority performs any duty or exercises any power.

Veterinary Surgeons.—The Veterinary Surgeons Amendment Act (c. 24, U.K.), extends the disciplinary powers of the Royal College of Veterinary Surgeons to all persons holding the veterinary certificate of the Highland and Agricultural Society of Scotland granted prior to the passing of the Veterinary Surgeons Act of 1881.

Working Men's Dwellings.—The Housing of the Working Classes Act (c. 59, E.) is an adoptive Act only, being limited in its application to Part III. of the Consolidating Act of 1890, which part is also adoptive only, and enables local authorities to establish lodging-houses for the working classes. It allows any council, except a rural district council, which may have already adopted that part of the Act, to establish or acquire lodging-houses for the working classes outside their district. There is no definition of the term "working classes" either in the Act of 1890 or in the new Act,

but "lodging-houses" by the Act of 1890 include separate houses or cottages, whether containing one or several tenements, the term "cottage" including a garden of not more than half an acre and of not more than the annual value of £3. Part III. of the Act is also newly allowed to be adopted by the council of any rural district, with the consent of its county council. In giving or withholding consent the county council is to have regard to the area proposed, to the necessity for accommodation therein, to the probability of the required accommodation being provided elsewhere, and to the liability which will be incurred by the rates, as well as to the question whether adoption is generally prudent. There are special provisions as to expenses in London. Local authorities, if rural, with the consent of the county council, and if urban, with the consent of the Local Government Board, may let on lease land acquired by them to a lessee agreeing to build and maintain lodging-houses exclusively for occupation by the working classes.

Perhaps the most important of the new enactments is that which directs that county councils, upon a parish council resolving that a rural district council ought to have taken steps for adoption of the Act and have not done so, may themselves take over the powers of the district council as to that parish. Part III. of the Act of 1890, which is now brought into such prominent importance, was to a great extent a reproduction of the Labouring Classes' Lodging-Houses Acts of 1851 and 1866, which it repealed. The Act of 1851 was in operation for nearly forty years, but was adopted, it is believed, in one single instance only; Part III. of the Act of 1890 has, it is believed, been adopted with some frequency.

Concluding Observations.—*Temporary Legislation.*—The temporary character of the Ballot Act has already been adverted to. Amongst the many other temporary enactments continued by the Expiring Laws Continuance Act in company with that Statute are the Poor Rate Exemption Act, 1840, by which personal property is exempt from rates; the odd little Promissory Notes Act, 1863, which "removes certain restrictions on the negotiation of promissory notes and bills of exchange under a limited sum"; the Militia (Ballot Suspension) Act, 1865; the Sunday Observation Prosecution Act, 1871, restricting prosecution under the Caroline Act, which, as published by authority in the second edition of the *Statutes Revised*, obliges a justice of the peace to sentence a convicted offender, in default of a five-shilling fine, to two hours of the stocks; the Employers' Liability Act, 1880; and last, though not least, the Local Government Elections Act, 1896, by which a county council may smooth over difficulties arising out of any election of parish or district councillors or guardians.

Surely it is now high time that at least some of these temporary enactments should either be swept completely out of the Statute Book or completely into it.

Improvement of Legislation.—It cannot be said that our present mode of legislation is quite satisfactory. The restoration of preambles (as was recommended by the Law Society in the case of the Money-Lenders Bill); the compulsory use of "breviates" or prefatory memoranda in the case of all Bills (as was recommended by a Select Committee of the House of Commons in 1875); the more circumspect use (as was recommended by the same Committee) of that allusive legislation so scathingly condemned by the late Lord Coleridge and by Mr. Justice Mathew in 1889,[1] the resumption of the consolidation which has been a stranger to the Statute Book since 1896; the direction, in a general Statute, that all public Acts are, in the absence of any express direction to the contrary, to come into operation on the New Year's Day next after their passing; the fixing, by each Act, of the mode of publication of statutory rules under it, and the direction that such publication is to be deemed constructive notice of their contents; the passing of amending Acts in anticipation of consolidation Acts, but with a commencement postponed until the commencement of the consolidation Acts, as was done in the case of the Lunacy Amendment Act of 1889 and the Lunacy Consolidation Act of 1890;—such reforms as these might do much to make it a far easier work to know the Statute Law.

Two other reforms may be suggested: the first a small and easy one, the second, great and difficult. First, the citation of Statutes, instead of being by regnal year and chapter, should, as in the colonies, be by number and the year of our Lord. To this change the House of Commons Committee above referred to "saw no objection," and the opening of a new century offers a convenient opportunity for making it. Secondly, Parliament might conveniently in many, if not in all cases, "proceed" as the late Lord Beaconsfield once expressed it, "by way of resolution, and not by way of Bill"—that is to say, the substance of a Bill might be voted by a set of resolutions in plain and easy terms, and the legal result of these resolutions might afterwards be put into technical language by experts, whose renderings should not become law until after a reasonable time had been given for Parliament to detect deviations from the resolutions.

[1] In *Knill* v. *Towse*, 24 Q.B.D., at p. 195.

II. BRITISH INDIA.

[*Contributed by* Sir Courtenay Ilbert, K.C.S.I.]

1. ACTS OF GOVERNOR-GENERAL IN COUNCIL.

Acts passed—13.

The volume of Acts for 1900 is thin, but contains at least one measure of great importance.

Transfer of Property.—The Transfer of Property Act, 1882, was one of the codifying Acts passed by Mr. Whitley Stokes. It contained a short chapter dealing with the difficult subject of actionable claims. The sections of that chapter were expressed in very wide and general terms, and their interpretation had given a good deal of trouble to the judges. Under these circumstances, the chapter was redrawn by Mr. Chalmers, and the Bill embodying his redraft was introduced by his successor, and became law as Act No. 2 of 1900. The new Act defines "actionable claims" in such a manner as to show that they correspond to what are called "choses in action" in England, and regulates in more precise terms than the Act of 1882 the mode of transferring actionable claims, and the effect of a transfer.

The Act of 1882 contained a section (135) taken from the Roman law (where it was known as the *Lex Anastasiana*), and intended to provide for cases of unfair sale. It enacted that, subject to certain savings, "where an actionable claim is sold, he against whom it is made is wholly discharged by paying to the buyer the price and incidental expenses of the same, with interest on the price from the day that the buyer paid it." A similar provision had found its way into the laws of British Guiana, but was severely criticised in an appeal to the Judicial Committee of the Privy Council, who declared it to be inconsistent with the general principles of English law, insufficient as a form of protection, harsh in its operation, and open to evasion. Moreover, it appears that the Indian Courts were at hopeless variance as to the construction of the section. Under these circumstances the Indian Legislature, in re-casting the law, thought it advisable not to reproduce this Romanising experiment.

Prisoners.—The Prisoners Act, 1900 (No. 3), is mainly a measure of consolidation.

Companies.—Act No. 4 of 1900 enables companies registered in India to keep branch registers in the United Kingdom.

Whipping.—The Whipping Act (No. 5) authorises the infliction of the punishment of whipping for the atrocious crime known as "gang rape." It also authorises a sentence of whipping instead of imprisonment to be passed on juvenile offenders, not only for offences under the Penal Code, as might be done under the previous law, but for offences punishable by imprisonment under any other law, subject, however, to a power to local Governments to

exempt from the operation of this provision classes of offences for which, in their opinion, whipping is not a suitable punishment.

Courts of Justice.—The Lower Burma Courts Act, 1900 (No. 6), sets up a Chief Court for Lower Burma, constituted on similar principles to the Chief Court of the Punjab, and consisting of four or more judges, of whom two must be ordinarily barristers of not less than five years' standing. The Court is made the highest Civil Court of Appeal and the highest Court of Criminal Appeal and Revision in and for Lower Burma, and is invested with the usual large powers of making rules and of exercising supervision over inferior Courts. The Act is to some extent a measure of consolidation, and reproduces with improvements the previous provisions for regulating the subordinate civil Courts of Lower Burma.

Census Act.—No. 10 provided for taking the Indian census in 1901.

Land.—By far the most important and interesting Act of the year was the Punjab Alienation of Land Act, 1900 (No. 13). It was one of the numerous attempts which have been made to deal with the interminable and insoluble question of agricultural indebtedness in India by placing restrictions on the power of alienating land. The suggestions on which it was based may, according to the statements of the member of Council who introduced it, be traced in part to a pamphlet written in 1872 by Sir Raymond West and entitled *The Land and the Law in India*, and more immediately to a book written in 1886 by Mr. Thorburn, then District Officer in the Punjab, on the indebtedness of the Mohammedan landowners of the Western Punjab. In this book, which was entitled *Mussulmans and Moneylenders in the Punjab*, Mr. Thorburn recommended, among other measures of relief, that it should be made illegal in the Western Punjab for any person deriving profits from a shop or from moneylending to acquire any interest in land except in certain cases. The relations of agriculturists and moneylenders in the Deccan had been made the subject of many enquiries and of complicated legislation, and in 1891 a commission was appointed by the Government of India to report on the working of the Deccan Agriculturists' Relief Act of 1879, and on the desirability of extending a similar measure to other provinces. It was eventually determined to make the Punjab the first field of an experiment in this direction, and a committee of Punjab officials was appointed, with instructions to draw a Bill for this purpose. The measure, which came before the Governor-General's Council in September, 1899, was based on the recommendations of this committee, and to some extent embodied a compromise between widely discordant opinions. The measure became the subject of important debates in the Council, and attracted much attention beyond the Council walls.

The main object of the Act is to place restrictions on the permanent alienation of land by agriculturists, and to regulate the conditions under which an agriculturist may alienate his land temporarily by way of mortgage. The expression "agriculturist" is defined in very artificial terms as meaning

a person holding agricultural land who either in his own name or in the name of his ancestor in the main line was recorded as the owner of land or as hereditary tenant or as an occupancy tenant in any estate at the first regular settlement, or, if the first regular settlement was made in or since the year 1870, then at the first regular settlement or at such previous settlement as the local Government may, by order in writing, determine.

But power is given to the local Government, with the previous sanction of the Government of India, to extend or restrict this definition by notification, so as to include or exclude any persons or classes of persons.

Permanent alienation of land is defined as including sales, exchanges, gifts, and wills, but as not including any gift for a religious or charitable purpose, whether made *inter vivos* or by will. The cases in which a person who desires to make a permanent alienation of his land is at liberty to do so are where

(*a*) The alienor is not a member of an agricultural tribe; or

(*b*) The alienor is a member of an agricultural tribe and the alienee holds land as an agriculturist in the village where the land alienated is situated; or,

(*c*) The alienor is a member of an agricultural tribe and the alienee is a member of the same tribe or of a tribe in the same group.

A person acquiring land in case (*b*) may not make a permanent alienation of it unless the alienee is a member of an agricultural tribe or a person holding land as an agriculturist in a village.

In all other cases except those specified above, there is to be no permanent alienation of land except with the sanction of a Deputy Commissioner.

As to temporary alienation, it is provided that if a member of an agricultural tribe mortgages land, and the mortgagee is not a member of the same tribe or a tribe in the same group, the mortgage must be made in some one of the following forms:

(*a*) In the form of a usufructuary mortgage, in which the mortgagee takes possession and receives the rents and profits in lieu of interest, and towards repayment of principal, but must return the land free of charge on expiration of a term which must not exceed twenty years;

(*b*) In the form of a mortgage without possession, but subject to a condition that on failure to pay principal or interest the Deputy Commissioner may place the mortgagee in possession for such term, not exceeding twenty years, as the Deputy Commissioner may consider to be equitable, the mortgage to be treated as a usufructuary mortgage, and the rate of interest to be reasonable in the opinion of the deputy commissioner;

(*c*) In the form of a written usufructuary mortgage by which the mortgagor recognises the mortgagee as a landlord, and remains in cultivating occupancy as tenant, subject to payment of rent, land revenue, rates, and cesses, the rent not to be in excess of

the land revenue, the mortgagor having no power to alienate his right of cultivating occupancy, and the mortgagee having no power to eject, except on the grounds mentioned in the Punjab Tenancy Act, 1887; or

(*d*) In any form which the local Government may by general or special order direct to be used.

The Act contains other provisions regulating the form and contents of mortgages belonging to classes permitted by the Act. In future mortgages, any condition intended to operate by way of conditional sale is expressly declared to be null and void.

The Act is interesting to the student of land laws as an attempt to revive and enforce restrictions which in Western countries would be considered archaic, but which, in the opinion of the Government of India, are required by the social, economical, and political conditions of the Punjab. From the administrative point of view, it must be pronounced a bold and hazardous experiment, the effects of which no prophet will be confident enough to predict with any degree of assurance.

2. MADRAS.

Acts passed—6.

Tenants' Improvements.—In 1887 the Legislature of Madras passed an Act to secure to the tenants in the Malabar district the market value of their improvements, and thereby laid down the principle that the compensation to be awarded for the improvement should be the amount by which the value or the produce of the holding or the value of that produce is increased by the improvement. Act No. 1 of 1900 repeals the Act of 1887, and re-enacts it with some modifications and elaborations, but in so doing materially qualifies the principle broadly laid down by the Act of 1887.

Coffee Stealing.—An Act passed in 1878 was directed against the stealing of coffee from coffee plantations, and amongst other things required the purchaser of coffee from a coffee plantation, except in certain cases, to keep a record specifying the particulars of the transaction. The Madras Act No. 2 of 1900 imposes a similar duty on the vendor, and requires every person in charge of a coffee estate, whether owner or not, who sells, gives in barter or exchange, or delivers any coffee, to enter immediately in a book a true record of the transaction, specifying certain particulars. It also requires persons in charge of coffee estates to keep such books and make such returns as may be prescribed by the Government, and to give Government officers reasonable facilities for verifying the accuracy of these books and returns.

Local Boards.—Act No. 6 is a long Act making a large number of detailed amendments in the Madras Local Boards Act, 1884, by which the constitution of these local authorities is regulated.

3. BOMBAY.

Acts passed—3.

The Bombay Legislature passed three Acts amending respectively the Bombay Civil Courts Act, 1869, the City of Bombay Municipal Act, 1888, and the Bombay City Land Revenue Act, 1876, but none of these Acts appear to be of general interest.

4. LOWER PROVINCES OF BENGAL.

Acts passed—4.

Local Government.—The longest of the Bengal Acts of 1900 was Act No. 1, which applies the general Act regulating municipalities in Bengal to the municipality of Darjeeling, with a large number of detailed modifications.

Cruelty to Animals.—Act No. 3 amends the provisions of the Bengal Act of 1869 as to the punishment for employing animals unfit for labour, and authorises the local Government to set up infirmaries for animals which are diseased or disabled, or which have been cruelly treated.

5. NORTH-WEST PROVINCES AND OUDH.

Acts passed—2.

Local Government.—Act No 1. of 1900 supplies a code for the organisation and administration of municipalities in the North-West Provinces and Oudh in supersession of the previous enactments on this subject.

Settled Estates.—Act No. 2 of 1900 is an interesting Act, which enables *taluqdars* and other landowners in Oudh, after giving certain previous notices and obtaining the permission of the local Government, to tie up their landed estates by settling them in such a way that the owner for the time being cannot alienate or encumber them to the prejudice of his successors. Land so settled can be leased from year to year, or for a term not exceeding seven years, or, with the consent of the Collector, for a term not exceeding fourteen years. Like other similar enactments, the Act runs directly counter to modern Western views as to the expediency of facilitating the transfer of land.

6. PUNJAB.

Acts passed—4.

Land Preservation.—The object of the Punjab Preservation of Land (*Chos*) Act, 1900 (No. 2), is, to quote the language used by the Act, "to provide for the better preservation of any local area situate within or adjacent to the Siwálik mountain range, or affected or liable to be affected by the deboisement (*sic*) of forests in that range, or by the action of *chos*." A *cho* is explained to mean a stream or torrent flowing through or from the Siwálik

mountain range within the Punjab. The Act gives the local Government power to regulate operations such as clearing of land, quarrying of stone or burning of lime, cutting trees or timber, setting fire to trees, timber, or forest produce, or the herding and pasturing of goats, which may affect the forest growths essential to the retention of soil on mountain sides and hill slopes. It also enables the Deputy Commissioner to adopt or to insist on the adoption of measures for regulating the flowing of water within and preventing the widening or extension of the bed of any *cho* or for the reclamation or protecting any land situate within the limits of any such bed.

Municipalities.—Act No. 3 makes a few amendments of detail in the Punjab Municipal Act of 1891.

Descent of Jágírs.—The Punjab Descent of Jágírs Act, 1900 (No. 4), enables the Punjab Government to declare authoritatively the rules of descent in respect of succession to any assignment of land revenues.

7. BURMA.

Acts passed—2.

Vaccination.—Burma Act No. 2 makes provision for compulsory vaccination in the municipality of Rangoon, and in any other Burmese municipality to which the provisions of the Act may be extended.

8. REGULATIONS UNDER 33 VICT., C. 3.

Regulations made—8.

The Regulations made by the Governor-General in Council under the Government of India Act, 1870, illustrate, as usual, the great variety of problems which have to be dealt with in the less advanced parts of the Indian Empire.

The Chittagong Hill Tracts Regulation, 1900 (No. 1), enables the Government of Bengal to appoint a superintendent of the Chittagong Hill Tracts, and gives the superintendent large powers with respect to the possession of firearms and ammunition, the carrying of *daos*, spears, and bows and arrows, the importation, exportation, manufacture, possession, and sale of intoxicating drugs, such as opium and ganja, and the importation or sale of foreign spirits or fermented liquor. The local Government are invested with power to make rules for regulating the details of administration.

The Hazara (Upper Tanawal) Regulation, 1900 (No. 2), illustrates the mode in which administration by native chiefs is regulated and controlled. Its object is, as the preamble explains, to provide for the better administration of certain portions of the territories constituting the estate of the Chief of Amb, in the district of Hazara in the Punjab. It appears that this estate is known as Upper Tanawal, and that part of it is under a separate chief known as the Khan of Phulera. The Regulation explains that by the Chief of Amb

and the Khan of Phulera respectively are meant the persons for the time being appointed and recognised by the Government as holding those positions. It then declares that, subject to the law for the time being in force, the administration of justice, both civil and criminal, and the collection of the revenue shall in Phulera vest in the Khan of Phulera, and in the rest of Upper Tanawal vest in the Chief of Amb. In administering civil justice the rule of decision in Upper Tanawal is to be—

(*a*) Where any custom which is reasonable and equitable is established, such custom;

(*b*) Where no such custom is established, justice, equity, and good conscience.

In administering criminal justice a fair and impartial trial is to be accorded to every person accused of an offence, and no person is to be subjected to any punishment which is not recognised by the law for the time being in force in British India or which is unduly severe, and neither the Chief of Amb nor the Khan of Phulera is to be competent to pass upon any person sentence of death, or a sentence of imprisonment for a term exceeding twenty years, or a sentence of transportation.

Certain classes of offences under the Penal Code and other offences which may be specified by the Punjab Government are excluded from the jurisdiction of the Chief and the Khan, and are to be dealt with under British Indian law by British Indian Courts. The decisions of the Chief and the Khan are to be subject to revision by the Punjab Government. If any dispute arises as to the limits of Upper Tanawal or Phulera, it may be settled by the Deputy Commissioner of Hazara. Acts done in good faith by the Chief and the Khan in the exercise of any assumed jurisdiction before the Regulation comes into force are confirmed, and the Chief and Khan are indemnified for any irregular exercise of jurisdiction.

The Santhal Parganas Rural Police Regulation, 1900 (No. 3), establishes a system of native rural police in the Santhal hill district in Bengal. It provides for the definition of villages and their grouping in circles, and the placing of each circle under a *sirdar*, or chief policeman, with *chaukidars*, or ordinary policemen, under him. The expenses of the police are to be raised by means of village assessments, and by contributions from such landholders as hold their land subject to the condition, expressed or implied, of supporting the local police.

The Coorg District Fund Regulation, 1900 (No. 6), sets up a district board and a district fund for Coorg. The fund is to be fed from the proceeds of a special rate on land, from the proceeds of any house tax for the time being imposed on non-agriculturists, from the income derived from primary school fees, and from any money allotted by the Government for the purposes of the fund, and is to be administered in accordance with rules made by the Chief Commissioner, with the sanction of the Governor-General in Council.

The Aden Settlement Regulation, 1900 (No. 7), in like manner constitutes an Aden Settlement Fund and carries to it the proceeds of all fines inflicted and of all tolls, cesses, taxes, and other imposts imposed under the Regulation, and any other money lawfully accruing thereto by gift or transfer from the Government or otherwise. The Aden Settlement Fund and all public property in Aden, except such as belongs to the Port Trustees under the Aden Port Trust Act, 1888, are placed under the direction, management, and control of the Resident, and are to be applied for the purposes of the Regulation. The Resident is to be assisted by an Executive Committee, whose members are appointed and removable by him. The Aden Settlement Fund is to be applicable to the expenses incidental to works of public utility and convenience, the establishment and maintenance of schools, the registration of births and deaths, the registers of immovable property and of the transfers thereof, sanitary arrangements and the prevention and cure of disease, and other things conducive to the safety, health, welfare, and convenience of the inhabitants. The Resident is given power to impose cesses, taxes, and other imposts, and large powers of making rules. The Executive Committee are invested with powers of dealing with nuisances. The Regulation, in short, sets up a kind of rudimentary municipal government for Aden under the control of the Political Resident.

III. EASTERN COLONIES.

1. CEYLON.

[*Contributed by* F. H. M. Corbet, Esq., *and* Richard F. Honter, Esq.]

Ordinances passed—12 (between February 21st, 1900, and December 12th, 1900).

Statute Law Amendment (No. 1).—This Ordinance repeals several enactments, dating from 1876 to 1898, dealing with a variety of subjects.

The Council of Legal Education is by Ordinance No. 2 made a body corporate with a common seal; and all property acquired before or after the passing of this Ordinance is vested in them. Powers are granted to acquire land, invest funds, erect buildings, and sell or mortgage property. The Council are empowered to make, alter, or annul their own by-laws and the rules enacted by Ordinance No. 1 of 1889, which have hitherto governed the methods of education of advocates and proctors respectively.

Widows' and Orphans' Pension Fund (No. 3).—Doubts as to the liability of certain public officers to contribute to this fund have rendered necessary some amendment of the Widows' and Orphans' Pension Fund Ordinance, 1898. The term "public officer" is limited to such as have been admitted to

contribute to the fund under the provisions of that Ordinance and notify to the directors of the fund their desire to continue their contributions within three months of the date of the coming into operation of this Ordinance. It is provided that moneys belonging to the fund are to be invested with the Government of the colony, who guarantee interest at the rate of six per cent per annum. One-half a bachelor's contributions is to be returned on his retirement or death.

Carriage by Boats (No. 4).—This is a consolidation of the law regulating the carriage of passengers and goods by boat.

Waste Lands (No. 5).—This is concerned with claims to forest, "chena," waste, and unoccupied lands, and amends two Ordinances of 1897 and 1899. Government agents are required to give notice of the Crown's interest in lands of this description. The greatest possible publicity is to be given to such notices, and where the lands are more than ten acres in extent, additional notices are to be published in two newspapers. After enquiry into claims, an order embodying the results of the enquiry is to be published in the *Government Gazette*; this is to be final and conclusive. An exception is made in the case of land over ten acres in extent, when the consent of the Governor has to be obtained for the publication of such order.

Exportation of Arms to China (No 7).—The recent troubles in China and the facilities for exportation presented by the Colony gave rise to this Ordinance. A severe penalty is imposed on any person concerned in shipping arms, ammunition, gunpowder, military and naval stores to China.

Territorial Jurisdiction (No. 8).—This Ordinance amends the Courts Ordinance of 1889. The limits of each district and division are set out in a schedule. These are subject to alteration by the Governor with the concurrence of the judges of the Supreme Court.

Census (No. 9).—This Ordinance provides for the taking of a census from time to time. With reference to estates of more than twenty acres, the Superintendent is charged with the duty of enumeration.

Sanitation of Small Towns (No. 11).—A previous Ordinance of 1892 is amended by this. The Board of Health is entitled to take certain duties and sums payable under certain Ordinances. They are empowered to provide for the supply of water, and the cost and the maintenance of the waterworks is to be met by a water rate to be collected, recovered, and paid by the Government Agent. The money needed for the carrying out of sanitary improvements may be borrowed on the security of rates and taxes.

Exportation of Arms (No. 12).—This is a more general Ordinance than Ordinance No. 7. of the same year, which it repeals. A fine of one thousand rupees or imprisonment for a term which may extend to twelve months is imposed on any person concerned with the exportation of arms, ammunition, military and naval stores to any place proclaimed in the *Government Gazette*.

Customs (No. 13).—Three Ordinances are amended by this. Amongst

other things it is provided that the Collector shall not be bound to enquire into the validity of any lien claimed. He is empowered to sell goods not cleared within ninety days from their landing and to distribute the proceeds in the manner prescribed.

Antiquities (No. 15).—This Ordinance is a sign of the growing recognition of the value of the antiquarian remains in the colony. The Crown is declared to have absolute property in some antiquities, whilst in others it shares with the finder and the owner of the land where such remains are discovered. The fulfilment of certain prescribed conditions is necessary before permission to excavate can be given. The important place which antiquities are beginning to assume is shown by the severe penalties inflicted on the person who excavates without permission, the purchaser of illegally excavated antiquities, the accidental finder of antiquities who has failed to report such discovery, and the exporter of antiquities who has not obtained the permission of the Governor.

Municipal Councils (No. 16).—This amends the principal Ordinance of 1887. Buildings and grounds appropriated to educational and religious purposes, burial and burning grounds, and all buildings in charge of military sentries are exempt from the payment of certain rates.

Registration of Marriages (No. 19).—The two Ordinances of 1895 and 1896 are amended. Special provision is made for acting appointments in the event of the inability of the registrar of a division to attend to his duties. Some alterations are made in the conditions regulating the issue of certificates and cognate matters.

Registration of Births and Deaths (No. 23).—This contains a few alterations in, and additions to, Ordinance No. 1 of 1895. Provision is made for cases of non-registration of births within a prescribed time, the penalty for such omission being a fine not exceeding one hundred rupees. S. 13 provides for the removal and disposal of bodies, and imposes on offenders punishment by fine or imprisonment.

2. STRAITS SETTLEMENTS.

[*Contributed by* Walter J. Napier, Esq.]

Ordinances passed—23.

Jinrikishas (No. 1).—This Ordinance when brought into operation in any settlement repeals prior legislation and introduces an amended system of control over jinrikishas. Under it all such vehicles plying for hire must be licensed, to ensure their conformity to a certain standard. Their owners, who are photographed for purposes of identification, are rendered responsible for all offences under the Ordinance or under by-laws committed by the puller whilst in charge of the vehicle. There is no system of licensing of pullers

under the Ordinance, but such a system may be adopted in any municipality by means of by-laws.

Governor (No. 3).—The salary and staff of the Governor are regulated by this Ordinance, which further contains rules as to the furnishing of Government House. This is done at the expense of the colony, the Governor paying a percentage on the value of the furniture in the private part of the house.

Malay States Leper Asylum (No. 4).—This provides for the establishment within the colony of a leper asylum for the use of lepers from the Federated Malay States, and authorises the detention of lepers therein.

Singapore and Johore Railway (No. 8).—The construction by the Government of the first railway in the island of Singapore is authorised—a railway which will form the most southerly link in the chain of railroad which is now in course of construction in the Malay Peninsula.

Opium (No. 9).—This amends the Ordinance of 1894, providing a standard of the quality of the *chandu* to be sold by the opium farmer, and requiring him to retail that article in smaller quantities than heretofore.

Municipal (No. 10).—This effects a number of amendments in the Municipal Ordinance, 1896. It allows a municipal fund to be expended in providing hospital accommodation for persons suffering from contagious and infectious diseases and for the maintenance of works for providing artificial light for public and private purposes the supply of which had been previously maintained by commercial enterprise. Additional powers having in view the laying out of streets, the provision of footpaths (at the expense, so far as the dedication of the land is concerned, of the individual landowner, and not of the ratepayers), and the general sanitation of the municipality are conferred upon the commissioners.

Post Office (No. 13).—This authorises the seizure by the Postmaster-General of open correspondence containing any lottery ticket or any advertisement relating to a gaming transaction.

Christmas Island (No. 14).—This island, situate in the Indian Ocean two hundred miles south-west of Java, was annexed to the British Empire in July, 1888. It having been added to the colony in May, 1900, and phosphate works having been established upon it requiring a considerable labour staff, provision was needed for its administration. Under this Ordinance the island is for administrative purposes to form a part of the settlement of Singapore; the law of the colony, with the exception of certain specific Ordinances, is extended to it, and subsequent colonial Ordinances are to apply unless otherwise therein provided. A magistrate has recently been stationed in the island.

Chinese Immigrants (No. 15).—It being doubtful whether Macao was covered by the expression "China" as used in the Ordinance of 1880 dealing with this subject, an interpretation of the expression is provided with the object of including it and all territory which formed part of the Chinese Empire on January 1st, 1840.

Women and Girls Protection (No. 17).—This Act allows, on the trial of a

person for importing a girl for purposes of traffic, evidence to be given that the person charged has imported other girls, and if habitual importing is proved, he is to be deemed to have imported the girl in question.

Supply.—Nos. 18 and 19.

Harbours (No. 20).—Owing to the large number of foreign transports which called at Singapore on their way to China last year, it was deemed advisable to give the Governor in Council power to make rules "for permitting, regulating, and controlling the landing and movements on shore of soldiers and sailors in the service of foreign Powers."

Criminal Procedure Code (No. 21).—This is the most important piece of legislation of the year. In 1892 a Criminal Procedure Code, which had been drafted by an exceptionally strong Commission of lawyers presided over by Sir Edward O'Malley, the then Chief Justice, was passed, but for reasons into which it is unnecessary to enter was never brought into operation. The present Code is based upon that of 1892, but embodies a number of suggestions of magistrates, whose experience as members of the civil service was of considerable assistance on a practical subject like that of criminal procedure, but who, strangely enough, were not represented upon the Commission of 1892.

The Code as it is now law follows in the main the lines of the Indian Criminal Procedure Code. It is divided into six parts, and contains four hundred and thirty-five sections and five schedules. The Criminal Courts under it are—

(i) *Police Courts.*—Their powers are exercised by a single police magistrate appointed for the settlement within which the police court is constituted, express provision being made for the sitting being held in a court-house in preliminary enquiries and summary trials. On a summary trial a police court has power to order imprisonment for a term not exceeding six months (ss. 6, 10, and 13).

(ii) *Bench Courts.*—Their powers are exercised by two or more police magistrates appointed for the settlement within which the bench court is constituted. Their power of imprisonment is limited to two years (ss. 6, 10, and 13).

(iii) *Supreme Court.*—This jurisdiction is either for the trial of prisoners or appellate. All trials before the Supreme Court are to be by jury consisting of seven persons (ss. 183 and 187). A verdict need not be unanimous. If an accused person is found not guilty unanimously, or by a majority of not less than five to two, he is entitled to be discharged (s. 215). If he is found guilty unanimously, or by a majority of not less than five to two, in which the Court concurs, judgment is entered accordingly (s. 216). If the judge does not concur in such a majority verdict, then a fresh trial is to proceed before another jury (s. 217).

Part vii. deals with the jurisdiction of the Supreme Court on points reserved, appeals, and on revision. Points of law may be reserved in case

of convictions (*a*) by a police or bench court, or (*b*) on a trial before the Supreme Court. In the former case the appeal may be heard by a single judge, but in the latter case provision is made that the Court shall consist of two or more judges, and, further, that if a Court consists of two judges and they differ, the question is heard again before three judges, whose decision may be that of the majority (ss. 309–311). Appeals from convictions after trial by a police court or a bench court are of right, except in certain trivial offences (ss. 288 and 293). In case of acquittals, appeals by the Public Prosecutor alone are permitted (s. 292). The Supreme Court has also power to call for the records of inferior courts, and to revise their judgments and orders (ss. 312 to 316).

Under the Code of 1892 the office of coroner was abolished. The old system has now been reverted to, and chapter xxx. is intended to codify the law on the subject. Special chapters also deal with lunatics (xxxi.), proceedings in cases of certain offences relating to the administration of justice (xxxii.), and directions in the nature of a *habeas corpus* (xxxiii.). Perhaps the most important alterations in the law are effected by part v., which is headed "Information to the Police and their Powers to Investigate," and chapter xxxiv., entitled "Of the Attorney-General and the Public Prosecutor."

The process of investigation of crime and the powers of the Public Prosecutor in relation thereto may be briefly summed up. It is the duty of the public to give notice of the commission of, or of the intention to, commit the more serious crimes (s. 19). When information is given as to the commission of any "seizable" offences—*i.e.*, for which under the Code the police have power to arrest without a warrant—such information must be reduced into writing and signed by the informant (s. 114). It then becomes the duty of a police officer (who is not to be below the rank of inspector) to send a report to the Public Prosecutor and, subject to certain exceptions, to proceed in person or by deputy to the spot "to enquire into the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and, where not inexpedient, arrest of the offender" (s. 117). Such a police officer (not being below the rank of inspector) has power to require the attendance of witnesses before him and to examine them (ss. 118 and 119), and, if necessary, to search for documents or other things necessary to the conduct of an investigation (s. 123); and while it is laid down that no inducement, threat, or promise is to be offered to any person charged with an offence to induce such person to make any statement having reference to the charge, it is expressly provided that "no police officer or other person shall prevent or discourage, by any caution or otherwise, any person from making, in the course of any police investigation under this chapter, any statement which he may be disposed to make of his own free will" (s. 121). Provision is made for the keeping of a diary by a police officer making an investigation, and as soon as an investigation is

finished a report in the prescribed form is to be sent to the Public Prosecutor (ss. 125 and 1126). This functionary is to be the Attorney-General (to or for whom the Governor has power to appoint assistants or deputies), and he is to have the control and direction of criminal prosecutions and proceedings under the Code, the Solicitor-General (who is always stationed in Penang) acting in that settlement as Public Prosecutor, under his general control and direction (s. 373). When any accused person is committed for trial, a copy of the record of the proceedings is to be sent to the Public Prosecutor; if he is satisfied that a criminal offence is disclosed, but that further evidence is required, he may direct the police court to pursue the enquiry further (s. 377), and when he is satisfied that the evidence taken is sufficient to afford a foundation for a full and proper trial, then he may designate the court, whether the Supreme Court or the bench court, before which the case shall be placed for trial (s. 379). Certain special powers conferred upon the Public Prosecutor are only to be exercised by the Attorney-General or Solicitor-General; they are—

(i) To direct a police court to discharge any person who has been committed by it for trial (s. 376);

(ii) To order any police court before which an enquiry has been, or is being, held to transmit the proceedings to him, and to give such instructions with regard to the enquiry as he may consider requisite (ss. 383 and 384).

In order to retain to the Crown full control of all prosecutions, provision is made that in all criminal proceedings (original and appellate) before the Supreme Court, only the Public Prosecutor or an advocate authorised by him shall appear on behalf of the Crown, and that every prosecution for a "seizable" offence before a bench court and every enquiry before a police court shall be conducted by the Public Prosecutor or by some person authorised by him (s. 373).

Bankruptcy (No. 22).—Among other minor alterations in the law on this subject, the omission to keep proper books, the failure to produce such books, the contracting of debts by rash speculation or extravagance or without having any reasonable ground of expectation of being able to pay them, are made offences punishable with three months' imprisonment.

Public Officers' Guarantee Fund (No. 23).—The system of requiring certain public officers through whose hands money passes to find sureties not having proved satisfactory, a guarantee fund of such officers is established under Government management. Contribution to such fund, in lieu of other security, is obligatory on all officers required to give security who are appointed or promoted after the Ordinance, and is permissive to such officers as have been appointed previously.

3 FEDERATED MALAY STATES.

[*Contributed by* WALTER J. NAPIER, ESQ.]

The more general legislation of these States is identical. Bills are drafted by the Legal Adviser and laid before the State Councils as opportunity occurs. Thus enactments relating to Mohammedan marriage and divorce, extradition, secret societies, probate and administration, registration of bills of sale, and Imperial loans have been passed in all the States.

(i) PERAK.

In addition, enactments have been passed on the following subjects: Vehicles, banishment, jinrikishas, railways, and for the registration of powers of attorney.

(ii) SELANGOR.

Besides the general enactments passed in common with all the States, the following appear in the Enactment Book: Pedlars, frontier police (giving the police and magistrates of the State and of any contiguous State powers and jurisdictions within a limited distance from the common boundary), jinrikishas, railways, purchase and smelting of mineral ores, registration of powers of attorney, and licensing of ferry-boats.

(iii) PAHANG.

Here the additional enactments comprise those relating to contracts, legal tender, vehicles, frontier police, pensions to public officers, lighthouses, and a law giving priority to labourers' wages upon a sale by a Court of a mineral or agricultural estate.

(iv) NEGRI SEMBILAN.

The additional enactments comprise those relating to pedlars, compulsory education of Malay children, criminal procedure, purchase and smelting of mineral ores, railways, collection of opium, the registration of powers of attorney, and jinrikishas.

4. HONG-KONG.

[*Contributed by* F. H. M. CORBET, ESQ., *and* RICHARD F. HONTER, ESQ.]

Ordinances passed—36 (between March 5th, 1900, and December 17th, 1900).

Post Office (No. 5).—By this Ordinance, if insufficiently stamped correspondence be refused, or cannot be delivered, the burden of payment is thrown on the writer or sender. Subject to certain conditions, the masters of vessels not being contract packets receive gratuities for letters delivered to the Post Office.

Public Health (No. 6).—This amends the Ordinance of 1887. Summary proceedings may be instituted without previous notice against any person

breaking a by-law of the Sanitary Board; the consent of the Secretary, however, is essential.

Chinese Certificates Fees (No. 7).—The Chinese Certificates (American Possessions) Fees Ordinance legalises the fees charged for the issue of certificates to Chinese persons, other than labourers, desirous of proceeding to any port not within the United States, but actually owned by that Government.

Arms and Ammunition (No. 9).—No person may carry or possess arms or ammunition without licence. Such licence is to be produced whenever arms or ammunition are sold for use within the colony, and an export permit must be obtained before sale for export. Even for moving arms, etc., a permit is required. Persons carrying or moving without licence may be arrested without warrant. Importers of arms, etc., are to take out a licence and register their names and places of business.

Proceedings of Legislative Council (No. 10).—The provisional appointment of Mr. Arthur W. Brewin to the Council was found to be invalid; consequently this Ordinance was passed validating and legalising all the proceedings whilst he sat as member.

Widows' and Orphans' Pension Fund (No. 15).—The law providing for the granting of pensions to the widows and orphans of deceased public officers is consolidated and amended by this Ordinance.

Land Court for New Territories (No. 18).—The acquisition of territory by agreement with the Emperor of China necessitated the settlement of things in our new possessions on a fixed basis. In consequence of the many disputed claims to lands, a Land Court is established as a temporary measure to hear and determine such claims. It is to consist of a president and one other member, both appointed by the Governor. Powers similar to those vested in the Supreme Court are granted to them. No legal practitioner is to be allowed to plead for a claimant except by the special permission of the Court. Leave to appeal to the Supreme Court may be given where the value of the claim is over five thousand dollars. Rent agreed to be paid in produce is to be commuted according to a fixed rate, and any agreement for rent "in produce" entered into after the coming into operation of this Ordinance will not be enforced.

Hong-Kong and Shanghai Bank (No. 19).—The power to issue and have in circulation bills and notes payable to bearer on demand in excess of paid-up capital is continued until August 13th, 1908.

Liquor Licences (No. 20).—This Ordinance amends one of 1898 and repeals another of 1899. A clause is inserted forbidding the sale of liquor to persons other than those of Chinese race between midnight and 6 a.m.

Post Office (No. 24).—The laws relating to the Post Office are consolidated and amended by this Ordinance.

Steam Launches and Piracy (No. 25).—The disturbed state of Chinese waters and the growth of piracy owing to the negligence or treachery of the owner, captain, or crew of sea-going vessels have led to the adoption

of more stringent measures. The licensee of every steam-launch is to give security to the amount of a thousand dollars. This is to be forfeited if on enquiry by a magistrate into an actual case of piracy it is discovered that reasonable precautions have not been taken on board ship.

Stolen Goods (No. 26).—The Larceny Ordinance amends that of 1865. If any person without lawful excuse receives or has in his possession property stolen outside the colony, knowing such property to be stolen, he is liable to imprisonment for a term not exceeding seven years. Offences under this Ordinance committed outside Hong-Kong are to be classed as felonies or misdemeanours as though committed within the colony.

Raw Opium (No. 27).—Under a penalty of five hundred dollars this Ordinance compels the master of every vessel carrying raw opium to obtain from the Superintendent at the port of Hong-Kong a memorandum containing certain particulars required by the Ordinance of 1887.

Widows' and Orphans' Pension Fund (No. 28).—Two sections are added to Ordinance No. 15 above mentioned. By these provision is made for motherless orphans and widows of public officers whose children by previous marriages still survive.

New Kowloon (No. 30).—The geographical limits of New Kowloon are defined. All the Ordinances and regulations in force in Hong-Kong which did not apply to the new territories are extended by this Ordinance to New Kowloon.

Smoking (No. 31).—A fine not exceeding twenty dollars is imposed by this Ordinance on anybody found smoking within certain prohibited limits on military and naval premises.

Resumption of Crown Lands (No. 32).—This Ordinance empowers the Governor to resume Crown lands on the ground of insanitary conditions or for any public purpose. A board is appointed to determine the amount of compensation to be paid on such resumption; it is to consist of a judge of the Supreme Court as chairman and two other members, one to be nominated by the Governor and the other by the owner of the land resumed. The basis on which the board is to make its estimate is determined by certain considerations set forth in the Ordinance. Evidence may be received as to the enhancement of the rent of a building by its use for illegal purposes, and the increased value so created shall be excluded from consideration. The decision of the Board is final. Ordinances Nos. 23 of 1889 and 30 of 1899 are repealed.

Police (No. 33).—This Ordinance consolidates and amends the law for the establishment and regulation of the police force.

Arms and Ammunition (No. 35).—Ordinance No. 9 above mentioned is amended by this. Arms and ammunition can be imported into the colony only at the port of Victoria, and if landed in the colony for transhipment, can be stored only in such places as may be approved by the Captain-Superintendent of Police.

Statute Law Revision (No. 36).—The Chief Justice (Sir John Carrington, who has done such excellent work in this respect in other colonies) is appointed a commissioner to prepare a new and revised edition of the Statute Laws of Hong-Kong, with large powers of amendment as regards the form and arrangement of the Ordinances. He is authorised to draft Bills for submission to the Legislative Council containing such alterations and amendments in the matter and substance of the Ordinances as he thinks desirable. After proclamation by the Governor of the approval by the Legislative Council of the new edition, it is to be the sole and only proper Statute Book of the colony.

IV. AUSTRALASIA.

I. BRITISH NEW GUINEA.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—9.

Native Labour.—No. 1 consolidates and amends the laws regulating the employment of native labour and the dealings between natives and others.[1] It was reserved and assented to by the Queen in Council on June 29th, 1900. Contrary to the royal instructions to the Administrator of the colony, the Ordinance was not reserved for her Majesty's assent before being brought into operation, and action was taken under it before the royal assent was notified. It became, therefore, necessary to pass another Ordinance (No. 5) to validate all acts done under it from May 1st to June 29th.

The Ordinance is of seventy sections and is divided into thirteen parts. It prescribes the conditions under which it is lawful to employ or remove natives—*i.e.*, "aboriginal natives of the possession."

Part i. (preliminary) contains definitions and exemptions of natives in the employ of the Crown, savings of the Criminal Law and the Merchant Shipping Acts and of the Pearl and Bêche de Mer Fishery Ordinances, and provides for the appointment of officers to enforce the subsequent provisions of the Ordinance. "Native" in this Ordinance is restricted to "aboriginal natives of the possession."

Part ii. restricts the employment and removal of natives and provides for licences to persons recruiting natives. Natives cannot be taken over twenty-five miles from their homes for service without recourse to a magistrate, except in what are styled "settled labour districts."

Part iii. deals with the engagement of natives.

Part iv. authorises magistrates to cancel or alter written contracts of service.

Part v. deals with permits to remove natives within the possession,

[1] No. 2 of 1892; No. 3 of 1893; Nos. 2 and 8 of 1897; Journal O.S. vol. ii. p. 202; and No. 2 of 1898; Journal N.S. vol. i. p. 514.

part vi. with permits to remove natives beyond the possession, for fishing in Torres Straits or the Gulf of Papua, on boats *bonâ fide* stationed in the possession, as boatmen or seamen to Cook Town or Thursday Island, or as seamen for single voyages to certain specified places in Australasia.

Part vii. specifies the obligations incurred by persons who employ or remove natives.

Part viii. regulates the payment and recovery of wages which fall due day by day but are ordinarily payable by the month.

Part ix. provides for the inspection of vessels and of native labourers.

Part x. deals with offences by native labourers, including desertion and neglect of duty.

Part xi. deals with other offences, such as engaging natives by false pretences or inducing them to desert their employers.

Part xii. deals with guarantees required under the Ordinance, part xiii. with the records of written labour agreements and fees for documents.

Finance.—Nos. 2, 4, and 7 are Appropriation Ordinances.

No. 6 authorises the raising of a loan of £3,000 to defray the cost of survey of lands in the possession. The money is to be borrowed from the Queensland Government at an interest not exceeding four per cent.

Arms, Liquor, and Opium.—No. 3 of 1900[1] repeals s. 6 of the Arms, Liquor, and Opium Prohibition Ordinance of 1888, which permitted the issue of permits to bear arms to natives as there defined. It authorises the issue of permits (*a*) to natives to possess and use firearms (s. 3), or (*b*) to employers not being natives to provide arms to those of their native servants specified on the permit (s. 4). These permits include use of ammunition (s. 5). Permits may also be issued to persons other than natives allowing the drinking of intoxicating liquor. "If any who are not expressly permitted under this Ordinance to do so shall drink[2] or have in his possession any intoxicating liquor, he is liable to fine and in default of payment to imprisonment" (s. 1). Penalties are also imposed on the use or possession without express permission of opium[3] or firearms, ammunition or explosives.

Bankruptcy and Insolvency.—No. 8 adopts as the law of the possession the Queensland Insolvency Acts of 1874 (38 Vict., No. 5) and 1876 (40 Vict., No. 12) so far as applicable to the circumstances of the possession and are not repugnant to the letters patent constituting the colony or the royal instructions of the Governor, or to Ordinances, etc., having the force of law in the possession. The Courts are authorised to read the adopted Acts with such verbal alterations as will apply them to the matter before them.

[1] This Ordinance was passed on October 21st, 1899, but reserved for her Majesty's consideration. It was assented to by the Queen in Council on January 29th, 1900, and the date of the Governor's final assent is given as May 16th, 1900.

[2] The supply of intoxicants to natives is forbidden, except in cases of urgent necessity, by No. 1 of 1888, ss. 2, 7.

[3] The supply of opium to natives, except for medical purposes, is forbidden by ss. 2, 8 of the same Ordinance.

Public Health.—No. 9 adopts as the law of the possession the Queensland Health Acts of 1889 (53 Vict., No. 6) and 1890 (54 Vict., No. 19), and extends to the whole possession the provisions of the Queensland Health Act of 1884, already adopted in British New Guinea.

The term "native" in this Ordinance is used in two senses, both different from the sense employed in Ordinance No. 1, *supra*. In some sections it is defined by reference to the Interpretation Ordinance of 1891 (No. 1 of 1891), which is in these terms:—

> "Native" shall mean and include—
>
> Any aboriginal native of New Guinea or of any island adjacent thereto, or of any part of the possession of British New Guinea; and also
>
> Every aboriginal native of Australia or any island adjacent thereto; and also
>
> Every aboriginal native of any island in the Pacific Ocean or any of the East Indian Islands or of Malaysia that shall, whilst he is in the possession of New Guinea, live after the manner in which aboriginal natives of New Guinea or the islands adjacent thereto live; and also
>
> Every person who is wholly or partly descended from any aboriginal natives or native aforesaid, and that shall, whilst he is in the possession of British New Guinea, live after the manner in which aboriginal natives of New Guinea or the islands adjacent thereto live.

In other sections "native" is not defined; but the Ordinance is to be read with that of 1888 already referred to, in which "native" means "every person in the possession not of European descent."

The Administrator in Council is given all the power which in Queensland belonged to the Board of Health or local authority, but may establish sanitary boards, who are given powers of making certain sanitary regulations. Provision is made for defraying the cost of sanitation, and for recovery from owners of the cost of sanitary appliances. Health officers need not be medical practitioners. Under the Queensland law they must.

2. FIJI.

[*Contributed by* W. F. Craies, Esq.]

Ordinances passed—6.

Finance.—Nos. 1 and 5 are Appropriation Ordinances.

Customs.—No. 6 amends the Customs Duties Ordinances of 1898.[1] It admits free of duty naphtha and benzine to be used as fuel (s. 1), and other oils to be specified by Order in Council. Oil imported under the Ordinance is subject to the test of 78°. If it exceeds that test, it can be landed and stored only under conditions imposed by the Governor in Council (s. 2).

Census.—No. 3 provided for a census of the population of the Fiji

[1] Journal, N.S., vol. i. p. 517.

Islands to be taken on March 31st, 1901. Special provision is made for securing the enumeration of labourers on plantations, and of persons other than natives of Fiji not employed on plantations.

Juries.—No. 2 amends the law of Fiji as to juries. Persons liable to act as assessors under Ordinance 23 of 1875[1] are to be included in the list of jurors (s. 2). New jury lists are to be prepared by the Sheriff and revised by the Chief Justice. The list is to be alphabetical, and the Sheriff is to summon alphabetically. The Courts are allowed to permit the jurors to separate at any criminal trial except for treason, treason felony, or murder.[2]

Corporal Punishment.—No. 6 limits the maximum sentence of whipping to twenty-four strokes on a single conviction, whether the strokes are inflicted at one time or different times.

3. NEW SOUTH WALES.

[*Contributed by* A. R. Butterworth, Esq.]

Acts passed—Public, 85; Private 11.

Introductory Observations.—Of the eighty-five public Acts passed in the Session of 1900, fourteen are consolidating Acts, of which the principal are the Real Property Act, No. 25, the Public Works Act, No. 26, and the Crimes Act, No. 40.

While the work of consolidating the Statutes is thus progressing, the mode in which it is effected is not always entirely satisfactory. Whether it is desirable, for instance, to include certain enactments in a Crimes Act or in an Evidence Act may be open to argument; but it is difficult to discover what good purpose can be served by placing them in a consolidating Statute of the latter class and then, after a year or two, in a consolidating Statute of the former class.[3] The result of adopting such a course is that in the case of the consolidating Evidence Act, 1898 (No. 11), a new Act to bring the enactments up to date is already required, more than one-fifth of its fifty-five sections having already been repealed. Still more serious fault is to be found with a section of the Crimes Act, 1900 (No. 40, s. 407), the first clause of which deals with the competency of parties to *civil* proceedings.

Indecent Publications (Nos. 2 and 27).—The first of these Acts makes it a summary offence to publish a newspaper containing an indecent advertisement or report, or to deliver such advertisement for publication in

[1] Amended in 1882.

[2] Cf. 60 & 61 Vict., c. 18, s. 1.

[3] The provisions, for example, respecting witnesses to character contained in s. 348 of the Criminal Law Amendment Act of 1883 were repealed and re-enacted by the consolidating Evidence Act, 1898 (No. 11, ss. 2, 41, and schedule), and these provisions are in turn repealed and re-enacted by the Crimes Act, 1900 (No. 40, ss. 2, 412, 413, and schedule).

a newspaper, or to exhibit to public view, or post or print, indecent pictures or writings. A verbal error in this Act is amended by Act No. 27.

Art Unions (No. 4).—This Act extends the immunity for taking part in certain lotteries afforded by the principal Act of 1850.

Interest on Judgments (No. 5).—This Act reduces the rate of interest from a rate not exceeding eight per cent., or in the case of bills and notes twelve per cent., allowed by the Common Law Procedure Act, 1899, to a fixed rate of four per cent.

Attachment of Wages Limitation (No. 6).—By this Act no order in respect of future debts shall be made for the attachment of wages or salary not exceeding £2 a week, or where greater, for the attachment of more than the excess.

Sheriff (No. 16).—This Act repeals and consolidates enactments relating to the office of sheriff.

Public Watering Places (No. 17).—This Act consolidates the Acts regulating public watering-places and protecting certain reserves from trespass by stock.

Trade Marks (No. 19).—By this Act the Trades Marks Act, 1865, and the amending Act of 1893 are repealed, and their provisions consolidated.

Oaths (No. 20).—This Act consolidates the enactments relating to oaths, affirmations, statutory declarations, and affidavits.

Mining Partnerships (No. 21).—By this Act the Statutes limiting the liability of mining partnerships are consolidated and three earlier Acts repealed.

University (No. 22).—This Act consolidates the Acts relating to the University of Sydney and colleges within the University, and repeals eight earlier Statutes.

Noxious Microbes (No. 23).—This Act consolidates the enactments relating to the communication of infectious diseases to animals.

Partition (No. 24).—This Act consolidates enactments relating to partition.

Real Property (No. 25).—This important Act of one hundred and forty-three sections with twenty schedules repeals five earlier Statutes, and consolidates the enactments relating to the declaration of titles to land and the facilitation of its transfer. This Act and the Conveyancing and Law of Property Act, 1898 (No. 17),[1] now contain the main statutory provisions respecting titles to and the transfer of land other than Crown lands.

The Act is divided into seventeen parts (ss. 1–3 being preliminary) which deal with the following subjects: Part I., officers (ss. 4–11); Part II., general powers of Registrar-General (s. 12); Part III., lands subject to the Act (s. 13); Part IV., applications to bring land under the Act and proceedings thereon (ss. 14–28); Part V., issue of certificates of title and grants (ss. 29–31); Part VI., register book and registration (ss. 32–45); Part VII.,

[1] For a summary of this Act of 1898, see this Journal for 1899, pp. 500–501.

dealings. (This part includes (1) transfers (ss. 46–52); (2) leases (ss. 53–55); (3) mortgages and encumbrances (ss. 56–67); (4) dealings outside New South Wales (ss. 68–71); (5) caveats against dealings (ss.72–74); in the main, Part VII. and the schedules re-enact the corresponding clauses and schedules of the Real Property Act of 1862, hereby repealed, which introduced the well-known Torrens system of land registration and transfer.) Part VIII., implied covenants and short forms of covenants (ss. 75–81); Part IX., trusts (ss. 82–87); Part X., powers of attorney (ss. 88–89); Part XI., transmissions (ss. 90–96); Part XII., general provisions (ss. 97–117); Part XIII., fees (ss. 118–120); Part XIV., civil rights and remedies (ss. 121–135); Part XV., cancellation and correction of instruments (ss. 136–138); Part XVI., practice and procedure (ss. 139–140); Part XVII., criminal provisions (ss. 141–143).

Public Works (No 26).—This Act repeals the Public Works Act, 1888, and five other Statutes, and consolidates their provisions.

Land Tax (Nos. 28 and 46).—These Acts make certain amendments in the Land and Income Tax Assessment Act of 1895.

Inebriates (No. 32).—This is an Act to provide for the care, control, and treatment of inebriates, and for incidental purposes. It empowers a judge or police magistrate on the application of (*a*) an inebriate or any person authorised in writing in that behalf by an inebriate while sober; (*b*) the husband or wife, or a parent, or a brother, sister, son, or daughter of full age, or a partner in business of an inebriate; or (*c*) a sub-inspector of police acting on the request of a duly qualified medical practitioner in professional attendance on the inebriate, or on the request of a relative of the inebriate, or at the instance of a justice of the peace; and on satisfactory proof that the person is an inebriate to order that such person be placed under control for a period not exceeding twenty-eight days, or in an institution licensed under the Act or under the charge of an attendant for a period not exceeding twelve months; but no such order shall be made except on production of a medical certificate that the person is an inebriate, corroborated by other evidence, and on personal inspection (s. 1). A Court of Petty Sessions may order an inebriate thrice convicted of drunkenness within the preceding twelve months to be placed in such institution for a period of not less than six or more than twelve months, and a judge may from time to time extend the time for further periods not exceeding twelve months each (s. 3). The expenses may be ordered to be paid out of the inebriate's property (s. 4), and the Supreme Court may make orders as to the property of an inebriate incapable of managing his affairs (s. 5). Provisions are made for escape, and for the inspection of houses and institutions, and for the making of regulations.

Medical Practitioners (Nos. 33 and 70).—By these two Acts much has been done to restrict unqualified persons from practising medicine in the colony. The former is intituled "An Act for the Registration of Medical

Practitioners, the Restriction of Unqualified Persons from Practising, and to Amend such other Statutes as may be inconsistent therewith," and it renders liable to a penalty of £50 any person who, not being a legally qualified medical practitioner, uses the title of a physician, doctor of medicine, or surgeon, or any name or description implying that he is a legally qualified medical practitioner, with further penalties for a continuing offence (s. 1). The Medical Board is authorised in certain events to remove names from the register of medical practitioners (s. 2). By the later Act (No. 70) the Medical Board may remove from the register the name of any person who "has been guilty of infamous conduct in any professional respect," the Board sitting as an open Court to hear the charge, and an appeal lying to the Supreme Court (s. 1). A person advertising that he treats disease or ailments must advertise his full names (s. 2).

Witnesses (No. 34).—This Act consolidates enactments relating to the examination of witnesses and production of documents.

Supreme and Circuit Courts (No. 35).—This is a useful Act consolidating certain enactments relating to these Courts and repealing twelve earlier Acts and parts of many others.

Pastures and Stock Protection (Rabbit) (No. 37).—By this Act rabbits are included among "noxious animals" in the Pastures and Stock Protection Act, 1898 (No. 14).[1]

Validation of Orders of Sale in Administration (No. 38).—This Act, called the Administration (Validating) Act, was rendered necessary by the decision of the Supreme Court in *Kelly* v. *Toohey*, given on March 24th, 1900.[2] The Probate Act, 1890 (No. 25), had declared that no real estate should be sold or mortgaged by an administrator without the consent of all the beneficiaries or the order of the Court in that behalf (s. 35). It had been the practice of the Probate Court for many years to grant letters of administration expressed to give full power to sell or lease the real estate, and such a grant was commonly treated as equivalent to an order for sale. When the point, however, was raised in the case of *Kelly* v. *Toohey*, the majority of the Court held that such a grant was not an order for sale, and that when made, the administrator had no power to sell against the wish of the beneficiaries. As, however, a great number of sales had taken place under similar grants of administration, the present Act was passed to validate similar grants giving power or leave to sell, and acts done in pursuance thereof, and also certain transactions of sale, etc., by administrators or executors between 1862 and 1900. The Act is not strictly limited to validating such transactions, but confers new powers on the Court to authorise such transactions in the future (s. 4), and where the estate does not exceed £1000, to authorise the business or trade of the deceased to be carried on pending realisation (s. 5).

Crimes (No. 40).—This is a long Act of five hundred and seventy-seven

[1] As to this Act, see this Journal for 1899, pp. 499–500.

[2] Reported 21 N.S.W. L.R. (Eq.) 33.

sections and seven schedules, repealing a large number of earlier enactments and re-enacting their provisions. It is in the main a re-enactment of the Criminal Law Amendment Act of 1883 (No. 17) and amending Acts, and it preserves the simple distinction first made by the Act of 1883 whereby offences punishable by death or penal servitude are declared to be felonies (s. 9) and all other offences punishable under the Act are misdemeanours (s. 10).

Miners' Accident Relief (No. 42).—This is an Act to provide for allowances to persons injured by mining accidents and the relations of persons killed or injured by such accidents, and for that purpose to provide for contributions by owners of mines and persons employed in or about mines and out of the Consolidated Revenue Fund. The Act provides for the constitution of a committee for each mine in or about which fifteen or more persons are employed, to consist of a Government inspector, three persons employed about the mine, to be appointed by the employés, and two persons who may be appointed by the owners (s. 4). The manager is to deduct fourpence-halfpenny a week from the wages of each person employed, and pay the amount to the committee (s. 5), who may grant certain allowances in case of death or disablement caused primarily by any accident occurring in or about the working of the mine (s. 6). A Miners' Accident Relief Board is also constituted (s. 8), to consist of six members appointed by the Governor, their duties being to administer the fund vested in them (s. 11). Into this fund are to be paid (*a*) by every mineowner ten shillings per head per annum on the average daily number of persons employed; (*b*) out of the Consolidated Revenue an equal amount; and (*c*) by the committees the moneys in their hands not required for allowances. For the first twelve months any deficiency may be covered by a gift or loan from the Consolidated Revenue (s. 12). Provision is made for actuarial examination as to the solvency of the fund, and for an increase or reduction in the allowances accordingly (s. 14), and for the making of regulations (s. 15).

Dentists (No. 45).—By this Act provision is made for the constitution of a Dental Board and for the registration of persons duly qualified to practise as dentists, and the prevention of persons using the name of "dentist" unless duly qualified.

Companies (No. 47).—This Act is a transcript of the Imperial Companies Act, 1898, and empowers the Court to grant relief where no sufficient contract has been filed with the Registrar under s. 57 of the Act of 1874 (No. 19), or s. 55 of the Act of 1900 (No. 40), the terms of which sections are practically identical with those of s. 25 of the Imperial Act of 1867.[1]

Pacific Cable (No. 48).—This is an Act to enable the Government of New South Wales to join with the Governments of Great Britain, Canada,

[1] The statutory provisions in the colony are therefore practically identical with those which were in force in England after the Act of 1898 and before the English Act of 1890, which repealed s. 25 of the Act of 1867.

Victoria, Queensland, and New Zealand in the cost of the construction and maintenance of an all-British cable between Canada and Australasia across the Pacific Ocean, provided the total cost do not exceed £2,200,000, and that the contribution of New South Wales do not exceed one-ninth of such cost.

Supreme Court Procedure (No. 49).—This is a short Act making some amendments in procedure. It enables issues of fact to be tried and damages or compensation to be assessed by a judge without a jury by consent of both parties, while power is given to the judge notwithstanding such consent to order trial by jury. It also introduces an originating summons into the equity practice.

Children's Protection (No. 52).—This Act amends and extends the Children's Protection Act, 1892 (No. 30).

Truck Act (No. 55).—This is an Act to regulate contracts made with respect to, and the payment of, wages, and to prohibit such payment being made otherwise than in money, and to regulate the service of legal process in respect of the non-payment of wages.

Census (No. 65).—This Act makes provision for taking a census for the State on March 31st, 1901, and for obtaining certain statistics and particulars relating to live stock and crops and the occupation of land, and certain businesses and occupations, for the year 1901 and subsequent years.

Inscribed Stock (No. 69).—This Act, after reciting certain provisions of the Imperial Act intituled the Colonial Stock Act, 1877, and of the New South Wales Act intituled the Inscribed Stock Act of 1883, enacts that the Colonial Treasurer shall pay the amount of any judgment or order recovered in England.

Justices Acts (No. 71).—This Act makes certain amendments relating to procedure before justices and to appeals from them.

Federal Elections (No. 73).—This Act provides for the election in the State of members of the Federal Parliament, and enacts that a member of that Parliament shall be incapable of being elected or sitting in the State Parliament.

Old-Age Pensions (No. 74).—This Act, after reciting that "it is equitable that deserving persons who during the prime of life have helped to bear the public burdens of the colony by the payment of taxes, and by opening up its resources by their labour and skill, should receive from the colony pensions in their old age," makes elaborate provisions for the payment of pensions out of the Consolidated Revenue to certain persons of sixty-five years or upwards, or (in case of physical unfitness to earn a living) of sixty years and upwards, who have resided continuously in the colony for the past twenty-five years (ss. 9, 10). The pensioner must be of good moral character, and must for the preceding five years have led a sober and reputable life. His income must not amount to £52, nor his net capital to £390. No pension shall commence before July 1st, 1901 (s. 9).

In ordinary cases the amount of the pension shall be £26 per year, diminished (*a*) by one pound for every complete pound of income above £26; and (*b*) where the pensioner has any income, by one pound for every complete £15 of the net capital value of all his accumulated property; and where a husband and wife are each entitled to a pension, the amount payable to each shall, unless they are living apart, be £19 10*s.* per year, subject to similar diminution (s. 11). The colony may be divided into districts (s. 6) and a Board of three persons be appointed for each district (s. 8), whose duty it shall be to investigate claims (ss. 17–27). The pension being for the personal support of the pensioner, shall (subject to forfeiture, etc.) be absolutely inalienable, whether by assignment, charge, execution, bankruptcy, or otherwise (s. 43). Pensions shall not be granted to (*a*) aliens; (*b*) naturalised subjects, unless naturalised for ten years before the date of their claim; (*c*) Asiatics, whether naturalised or not; or (*d*) aboriginal natives (s. 51).

Companies (Death Duties) (No. 76).—This Act makes certain amendments in the Act of 1899 (No. 53).[1] It repeals s. 4 of the principal Act, which required certain foreign companies to keep a list of their shareholders, with certain particulars (s. 2), and provides that on receiving notice of probate or administration such companies shall return to the Commissioner of Stamps, and pay duty on, the holdings of deceased shareholders (s. 3). It also remits the death duty where the value of the member's shares and stock does not exceed £1000; and such duty shall not be payable when the only pastoral business carried on by the Company relates to property fallen into its hands by foreclosure or conveyance of the equity of redemption (s. 4). Duty duly paid by a Company shall be deemed to be paid on behalf of the personal estate of the deceased member (s. 5). Where the value of shares or stock held is between £5,000 and £6,000 the duty is raised from two to three per cent. (s. 6).

Friendly Societies (No. 77).—By this Act certain amendments are made in the Act of 1899 (No. 31).

Banks Half-Holiday (No. 80).—This Act provides that any bank, with permission of the Colonial Treasurer and on giving certain notice by advertisement, may close the bank or any branch to business on any afternoon.

Early Closing (No. 81).—This Act of nineteen sections makes various alterations in the Early Closing Act, 1899 (No. 38).[2] It contains numerous minute regulations, and provides for the taking of a poll in a "country shopping district" to decide which day of the week shall be the late and which the early closing day, each shopkeeper and each assistant above eighteen years old having one vote.

[1] As to this Act, see this Journal for 1900, pp. 575–576.

[2] A summary of this Act is given in this Journal for 1900, p. 574.

4. NEW ZEALAND.

[*Contributed by* Godfrey R. Benson, Esq.]

Acts passed—Public, 73; Local and Personal, 34; Private, deemed to be Public, 3.

Though this volume contains many striking new departures in legislation, its bulk is chiefly due to the number of consolidating Acts. These in all cases deal with the powers and duties of public authorities. It is to be noted also that the conferring on the Governor of powers to make regulations is extremely frequent. In the matter of draftsmanship the frequency of the provision that such and such provisions in regard to one matter shall "apply *mutatis mutandis*" to another matter is worth remark.

Bubonic Plague Prevention (No. 1).—This is an Act conferring on the Governor powers for dealing with the bubonic plague in any area that he may gazette for the purpose. The power given him is, in fact, to do anything that he, in his absolute discretion, may think fit for dealing with the plague; the safeguard against abuse is that the Act expires ten days after the then Session of Parliament. There is no provision for compensation for property destroyed or seized; it would appear, therefore, that the giving of such compensation was not contemplated, unless the Governor deemed this essential for the purpose of getting his order enforced.

Supply.—Nos. 2, 3, 11, and 19 are Supply Acts.

Lunatics Act Amendment (No. 4).—This Act amends the provisions of the Lunatics Act, 1882, in regard to the appointment of the Public Trustee to be committee of the estate of a lunatic, so found by inquisition. The Public Trustee is always to be so appointed in form, but another person may be appointed to exercise all or any of the committee's powers.

Public Contracts: Fair Wages and Working Hours (No. 5).—A contractor under Government or under any local authority who employs "manual labour," skilled or unskilled, is to be deemed to have agreed with his workers to observe such length for the working day and to pay such rates of wages "as are generally considered in the locality to be usual and fair for the description of labour to which they relate," but he may contract for a shorter day or higher wages. Such length must not be greater, nor such rates lower, than those under any award or order of the Court of Arbitration (*vide infra*, sub. No. 51) then in force in the district for similar workers and work, nor shall such length (exclusive of overtime) exceed eight hours. These provisions are to be deemed incorporated in the contractor's contract with the Government or local authority. The worker cannot contract out. There is a penalty on the employer for "breach of the provisions of this Act." Does this mean breach of the contracts with his workers and with the Government which by this Act he is to be deemed to have made?

Native Interpreters' Classification.—No. 6 relates to interpreters under the Native Land Court Act, 1894.

Weights and Measures Act Amendment (No. 7).—This Act provides for the annual testing of public weigh-bridges, and authorises the Governor to make regulations as to the material of which weights and measures shall be made and the manner in which they shall be stamped.

Ministers' Salaries and Allowances (No. 8).—This Act provides for the salary of a new Minister, the Minister of Railways, and raises the salaries of the previously existing Ministers above the amounts fixed in 1887, but not to the amounts which obtained from 1873 to 1887. The amounts now are: £1,600 for the Prime Minister, £1,300 for the Minister of Railways, £1,000 for each of the other Ministers.

British Investors in New Zealand Government Securities (No. 9).—This is an Act passed, in view of intended Imperial legislation, to facilitate investment of trust funds in the United Kingdom in Colonial Government securities. It authorises payment in certain cases by the Colonial Treasurer upon the judgment of a Court in the United Kingdom. S. 5 declares that if any future Act of the New Zealand Parliament seems to the Imperial Government prejudicial to the rights or remedies of holders of New Zealand Government Stock, "then that Act may properly be disallowed by her Majesty." It is unnecessary to point out the singularity, from the point of view of constitutional law, of this declaration; its real significance is no doubt that of an emphatic expression of desire to meet the views of the Imperial Government in this matter.

Noxious Weeds (No. 10).—This Act prohibits under penalty the sowing or sale of certain "noxious seeds," or of grain or seed which has not been thoroughly dressed to remove all noxious seeds. It requires for the same purpose thorough cleaning of threshing machines, etc., when moved from one farm to another. It imposes on occupiers of land strict requirements as to the clearing away of weeds (including briars and gorse when not used for hedges) and the trimming of hedges, and when these requirements are not fulfilled, authorises an inspector to do the work at the occupier's charges. The "noxious weeds" dealt with are for the most part English weeds the seeds of which have been imported mixed up with grass seed.

Shorthand Reporters.—No. 12 provides for the appointment of official reporters to be employed in the Supreme Court when the judge thinks fit, being paid by one or more parties as he orders, and to be employed in inferior Courts on the application of any party, such party paying the fees.

Agricultural and Pastoral Societies Act Amendment (No. 13).—This Act is passed to encourage the holding of winter shows of agricultural produce, and for this purpose empowers societies incorporated under the principal Act (1877) to acquire and manage land and to erect buildings thereon.

Customs Duties Amendment (No. 14).—This Act removes the customs

duties previously levied on a number of articles. The chief articles so freed are agricultural machinery and implements, machinery for dairying, manufacture of beetroot sugar, and mining purposes, certain other tools and parts of machinery, locomotive and traction engines, rice, salt, raw coffee, kerosene. The duty is also lowered on a few articles, including tea (now taxed at twopence a pound), cocoa and roasted coffee (now taxed at threepence a pound), matches, drugs and patent medicines.

Education Boards Election (No. 16).—The Education Act, 1877, divides the colony into twelve education districts, each of which is divided into school districts, the householders of any locality being empowered to form a separate school district. In each school district there is a school committee elected by the householders which have the immediate control of the primary school or schools of its district. In each education district there is an education board having a general control (under the Ministry of Education) of the primary education of its district and also the power of establishing a high school. The education board was formerly elected by the school committees, each committee giving its vote corporately; the present Act provides for the election of education boards by the members of school committees voting individually.

Government Valuation of Land (No. 17).—This is an Act amending a previous Act of 1896. The two together provide for the valuation of all land in the colony for the purpose of local rates by officials of the central Government subject to appeal to special Courts, the members of which are nominated by the central Government. The Governor may use the same valuation for the purpose of assessment to land tax. The valuation is to distinguish between "capital value," and "unimproved value" (*vide infra*, Nos. 18 and 68.) The present Act provides (*inter alia*) that if the Valuer-General (who is also the Commissioner of Taxes) is dissatisfied with the capital valuation of any freehold land as fixed by the Court, he may set his own value upon the land and give the owner the choice of accepting such value as correct or being bought out at it. Similarly an owner may require the Government either to reduce his valuation or to buy him at the valuation as it stands.

Rating or Unimproved Value Act Amendment (No. 18).—The principal Act of 1896 enabled any locality which adopted the Act by a poll to levy rates upon the "unimproved value of land" instead of on the "capital value." If the proposal to adopt the Act was defeated at the poll, it could not be submitted again for three years. The principal Act required that at such a poll at least one-third of the ratepayers should record their votes. The Local Government Voting Reform Act, 1899, does away with this and similar requirements in other Acts. The present Act provides that where a proposal to rate an unimproved value has been lost by reason that less than one-third of the ratepayers voted, it may be put to the vote again before the three years be elapsed.

Testator's Family Maintenance (No. 20).—The object of this Act is to prevent a testator leaving his family without proper provision. While departing from the freedom of testamentary disposition which English and German law allows, it does not adopt the principle of Scottish, French, and Italian law—which prevents a man with a family from disposing by will of more than a certain portion of his estate—but takes a novel course by imposing a most difficult discretion on a judge. If a deceased person leaves a will "without making therein adequate provision for the proper maintenance and support" of the testator's wife, husband, or children, a judge may, upon their application, make such provisions as he thinks fit out of the estate; it is in his discretion to attach any condition he chooses to his order, and to refuse an order altogether on the ground of character or conduct. No assignment of the provision made before the order is to be effectual. Presumably children who take no benefit under a will are not entitled to apply if they are adequately provided for by the testator's settlement or if they have ample means of their own. Presumably also the standard of adequacy will vary with the family's condition of life. But the wording of the Act leaves both these questions open to some doubt.

Post Office (No. 21).—This is an Act to consolidate the law regulating the postal service. We note one drastic provision. If the Postmaster-General has reasonable ground to suppose that a person is carrying on a betting business or a lottery or the like, he may during his pleasure prevent any letters whatever being delivered to that person.

Inspection of Machinery Act Amendment (No. 22).—By this Act the administration of the principal Act of 1882 is always to be in the hands of one of the Ministers composing the Executive Council. Certain existing enactments relating to machinery driven by steam and other specified kinds of motive powers are enlarged so as in each case to include a wider class of motive powers. Persons in charge of stationary engines and boilers are required to hold certificates of various grades, according to the character of the engine or boiler they tend.

Indictable Offences Summary Jurisdiction Amendment (No. 23).—In addition to various minute amendments of the principal Act of 1894, this Act contains two provisions to be noted. A person charged with any offence which is punishable on summary conviction with more than three months' imprisonment is in all cases to be given the option of trial by jury. When a Court proposes to commit an accused person for trial (for an offence not punishable with death), he may be given the option of pleading guilty then and there, and on doing so will be committed to the Supreme Court for sentence only.

Local Bodies' Loans Act Amendment (No. 24).—The amendments (to the Act of 1886) contained in this Act chiefly relate to the raising of loans for parts of local government districts secured by special rates on such parts of the district alone.

Public Health.—No. 25 consolidates the law as to public health without amendments which require notice.

Criminal Code, 1893, Amendment (No. 26).—By this Act incest between parent and child, brother and sister, whether of half or whole blood, and grandfather and granddaughter is made punishable, in each party being over the age of sixteen, with ten years' imprisonment with hard labour.

Government Railways (No. 27).—This Act consolidates and amends the law relating to the maintenance and management of Government railways.

Old-Age Pensions Act Amendment (No. 28).—The Old-Age Pensions Act, 1898, was summarised in this journal in 1899. The present Act (*inter alia*) relaxes the restrictions upon absence from the colony, and diminishes the length of residence required in the case of a naturalised (non-Asiatic) subject. The governing bodies of charitable institutions are prohibited from refusing admission to persons as inmates on the sole ground that they have pensions.

Fisheries Encouragement Act Amendment (No. 31).—The Fisheries Encouragement Act, 1885, provided (*inter alia*) for the payment of a bounty or "bonus" to exporters of canned and cured fish. This provision was originally limited to seven years, and having been kept alive by two subsequent Acts till 1900, is by the present Act kept alive for one year more.

Sale of Poisons Amendment.—No. 33 enlarges certain provisions of an Act of 1871 so that they extend to compounds of the poisons therein dealt with.

Civil Service Examinations.—No. 34 amends in detail the law as to examinations for cadets in the Government service.

Imprisonment for Debt Limitation (No. 36).—This Act amends the Imprisonment for Debt Abolition Act, 1874, in several particulars. *Inter alia* it transfers the form of committal from two justices to a stipendiary magistrate. It appears also to be intended to authorise imprisonment for debt in case of fraud not covered by the principal Act, but on a comparison of the two Acts it is doubtful whether it carries out this intention. Its most remarkable provision is one prohibiting committal to prison where the judgment creditor is a person, firm, or company whose businesss is the collection of debts, and has taken an assignment of the debt from the original creditor.

Pacific Cable.—No. 37 amends the Pacific Cable Authorisation Act, 1899, by repealing a proviso limiting the total cost of the work authorised, and substituting a proviso that New Zealand's share of the guarantee to be given shall not exceed one-ninth of the whole.

Slaughtering and Inspection (No. 38).—This Act requires the provision of public abattoirs in the more populous districts, permits it in all districts, prohibits other slaughterhouses where there is a public abattoir, and requires

registration of them where there is no public abattoir. It provides also for special meat-export slaughterhouses. All meat slaughtered in the public and meat-export slaughterhouses is to be inspected by an inspector appointed by the central Government, but this does not apply to the registered slaughter-houses. Meat is not to be exported for use beyond the colony except upon the certificate of an inspector, who is to satisfy himself that the meat is free from disease.

Workers' Compensation for Accidents (No. 43).—This Act is an adaptation of the Workmen's Compensation Act, 1897, and, except in the points here mentioned, its provisions are substantially the same as those of its original. By s. 4 the Act is made to apply to, and only to, "employment by the employer on, in, or about (1) any industrial, commercial, or manufacturing work carried on by, or on behalf of, the employer as part of his trade or business; or (2) any mining, quarrying, engineering, building, or other hazardous work carried on by, or on behalf of, the employer, whether as part of his trade or business or not; or (3) any work carried on by, or on behalf of, the Crown or any local authority as the employer, if the work would, in the case of a private employer, be an employment to which this Act applies," and the effect of the definition of "workers" is to make the Act expressly apply to employment on any ship or vessel within the jurisdiction. Much doubt seems likely to arise as to the effect of the qualification "industrial, commercial, or manufacturing," unless, indeed, the "commercial" includes everything that is meant to pay, in which case these words are surplusage. Is an acrobat in a circus within the Act? Again, in sub-s. 2, must the "other hazardous work" be *ejusdem generis* with the works specified just before? If so, some of the most hazardous kinds of employment for the employer's amusement are excluded—*e.g.*, that of a "beater." Sub-s. 3 is an example of a common but inconvenient form of drafting. It is to be noted that the words "on, in, or about" have not a local sense; and thus one of the harshest kinds of exclusion from the benefit of the English Act is removed. This section is manifestly far wider in its scope than the corresponding section of the English Act, and it is possible that at the points mentioned above it may be stretched so far that very few cases of exclusion will, in fact, occur. But whatever cases may be intended to be excluded from the three numbered heads above, they will be in themselves just as unreasonable as the more numerous exclusions from the English Act. Granting that it is right to make an employer generally a *nolens volens* insurer, what difference does it make to his workman's claim to protection whether the work is his trade or his hobby? Still more (under sub-s. 2), if an accident does in fact occur in a certain work, what difference does it make whether the work could have been called *à priori* "hazardous"?

All claims arising under the New Zealand Act are to be dealt with by the Court of Arbitration under the Industrial Arbitration Act, and the local

Board of Conciliation under the same Act takes the place of the Registrar of Friendly Societies.

The liability under this Act is not confined to the person who would be liable under the English Act. On the one hand the person who actually employs the workman is always liable, even in cases like that of *Cass* v. *Butler*, where he is not under the English Act the "undertaker." On the other hand, when the immediate employer has contracted to do work which either "relates directly to the land, building, vessel, or other property of the principal, or is directly a part or a process in the trade or business of the principal," the workman can always proceed against the "principal," and the immediate employer is then liable to indemnify the "principal." This being so, the "principal" should have, but apparently has not, against the employer the same security for his indemnity as the "worker" has for his compensation. The "worker's" security for his compensation includes a first charge on the mine, factory, building, machinery, plant, etc., etc., on or about which he was employed, and on the land where the mine, factory, or building is situate. Brothers and sisters may be "dependents."

In the rules in the schedule as to scale and conditions of compensation the figures mentioned in the English Act are enlarged, and a limit is placed upon the total which the employer may have to pay in weekly payments.

Representation (No. 44).—By this Act the members of the House of Representatives (other than Maoris) are increased from seventy to seventy-six. It was reduced in 1887 from ninety-one to seventy; there are four Maori representatives. There are standing commissions (one for each island) to redistribute seats, each within its own island, after every census. These are to meet together once, under this Act, to decide how many of the new seats are to go to each island, and are then to resume their separate operations. The rules to be followed by the commissions in allotting these six seats between the islands and thereafter in redistributing seats within each of the two islands are laid down by Acts of 1887 and 1889. The principle of the rules is that proportionately more representation is given to the population outside towns of over two thousand inhabitants than to the population in such towns; and the provisions for securing this are ingeniously so drawn as to tell most of all in favour of the scattered European inhabitants of Maori districts. Subject to this, each island is divided into single member districts of approximately equal population (with a few three-membered town constituencies). The present Act enlarges the limit by which the population of a constituency may exceed or fall short of the number, fixed by the principles above referred to, from 750 to 1,250.

Animals Protection Acts Amendment (No. 45).—This Act alters for the southernmost province, Otago, the date of commencement and closing of the (nine months') close season for game. It forbids the export of game,

except by special permit, and it makes every third year a close season for the native pigeon, the pukeko, and the kaka.

Electoral Act Amendment (No. 46).—This Act, in addition to various minor provisions in regard to registration, etc., makes it an "illegal practice" for any person "to canvass for votes for or on behalf of a candidate" for Parliament, the effect of which is to unseat the candidate if elected and to subject the canvasser to penalties. It appears (though not quite clearly) that the candidate's consent to a knowledge of the canvassing is immaterial. The Act further makes every day of an election a public holiday after mid-day, and makes it unlawful to sell liquor from mid-day to 7 p.m.

Maori Councils (No. 48).—In any district proclaimed by the Governor for the purpose, there is, under this Act, to be a council consisting of the stipendiary magistrate or other official member nominated by the Governor and six to twelve Maoris, being those who have received the largest number of nominations from Maoris in the districts ("Maoris" include half-castes.) It is to be the duty of such council to make recommendations to the Governor as to the ascertainment and enforcement of rights and duties among Maoris prescribed by Maori custom, the suppression of injurious customs, and measures for the education, health, and general advancement of the Maoris, and to keep the Government informed on matters affecting Maori welfare—*e.g.*, by supplying statistics of causes of death. Such a council may further make by-laws for sanitary purposes, the prevention of drunkenness and gambling, and of smoking by children, the management of eel-weirs and oyster-beds, the branding of cattle, the regulation of hawkers, and other matters. Conferences of delegates from such councils may be held annually.

Land and Income Assessment (No. 49).—This is an Act consolidating and amending the Acts of 1891 and later years which have replaced the former (ungraduated) property tax. The main features of the new system are as follows:—

Land (other than native land) is taxed on its capital value, less the value of unexhausted improvements and charges. Charges on land are taxed on their capital value. The tax in the former, but not in the latter, case is steeply graduated.

Income derived from land (including improvements) or from charges on land is, generally speaking, exempt from income tax. How this exemption affects the profits of speculative building is a complex question; and it does not appear to apply to owners of mines, quarries, timber, and flax.

Income tax is designed to reach all classes of income not exempted as above. Income from shares and debentures of companies are reached through taxation of the companies (whether under land or income tax), and the effect of the provision for this purpose is to deprive small share- and debenture-holders of the exemption given to others with small incomes. Income tax is not graduated.

Municipal Corporations (No. 50).—This Act consolidates, with some amendments, the Municipal Corporations Act, 1886, several Acts amending that Act, and, so far as they relate to boroughs, a number of Acts dealing with local finance, with public works, and with public libraries.

Industrial Conciliation and Arbitration (No. 51).—This Act consolidates with amendments the celebrated Act for this purpose passed in 1894 and three intervening amending Acts. The amendments in this and the three previous Acts concern only matters of detail. The following is an outline of the law as it now stands:—

The Act provides in the first place for the registration of "industrial unions," whether of employers or of workers. These are incorporated for all purposes of the Act, and have (*inter alia*) the power of suing their own members for fees, fines, etc. The Registrar has power, subject to appeal to the Court of Arbitration mentioned below, to refuse registration in case of needless multiplication of unions.

There is further provision for the registration of federations of such unions under the name of "industrial associations," and with slight exceptions everything here said as to "industrial unions" applies also to these associations.

The purpose of the Act is to provide for the settlement of "industrial disputes," which are so defined as to embrace almost every conceivable matter upon which employers and workers can fall out. The parties to such settlements may be either unions of employers on the one hand and of workers on the other, or individual employers and unions of workers. The modes of settlement provided are, first, "industrial agreements"; secondly, reference by either party to a local Board of Conciliation in the first instance, and, by way of appeal, to the Court of Arbitration. When such reference to a board has been made, all parties concerned are bound under penalties to preserve the *status quo* till the final decision of the question.

An "industrial agreement" is a settlement framed by the parties for themselves, publicly filed, and enforceable by law. It must specify a period, not exceeding three years, at the expiration of which it is subject to be set aside by a new agreement of the same kind or by an order of the Court of Arbitration. Until so set aside it continues in force.

The colony is to be divided by the Governor into "industrial districts," in each of which there is to be a Board of Conciliation, consisting of equal numbers elected by the unions of employers and the unions of workers in the district respectively, and of a president co-opted by the members so elected, or, in default of this, appointed by the Governor. Each union, large or small, has the same number of votes; these may be given cumulatively. Provision is made for the constitution, upon the application of all parties concerned, of special boards of experts to deal with special emergencies.

When a dispute is referred to a board, the board has the power to summon witnesses and examine them on oath, without being bound by

the legal rules of evidence; it cannot, however, call for books, etc. New parties to the dispute can be joined at any time during the proceedings. After hearing the dispute, the board frames recommendations, which are publicly filed. These recommendations may be forthwith accepted by the parties, either as they stand or with such variations as may be mutually agreed to, and thereupon the recommendations take effect as an "industrial agreement." Failing such acceptance, the recommendations still take effect after the expiration of one month from their being filed, unless, in the meantime, either party applies to the Court of Arbitration.

This court, a single court for the whole colony, consists of three persons appointed by the Governor, one from among persons nominated by unions of workers (every union having a right to make one such nomination), one from among persons similarly nominated by unions of employers, and one (the president) from among the judges of the Supreme Court. The court sits publicly; it has, in addition to the power of a board, the power to call for books, etc. Its award is final. It must specify a period, not exceeding three years, after which it is subject to be set aside by a fresh award of the court, but unless so set aside it continues permanently in force.

In the event of any breach of such an award, or of a settlement by a Board of Conciliation, or of an "industrial agreement," any party concerned, or the Registrar of Industrial Unions, may apply to the Court of Arbitration for the enforcement of the broken provision. The court may then impose such penalty as it deems just. If the property of a union on which a penalty has been imposed is insufficient to meet the penalty, then the individual members of the union are liable, up to £10 each, in respect of the penalty. With this exception awards, etc., are not directly enforceable against a member of a union, but only against the union corporately. It has been explained already, however, that an individual employer may be a party to a dispute, an award, etc. Moreover, when an award (not a settlement by the board or an "industrial agreement") is binding on any employer, a non-union worker employed by him in the same industry is bound by the award and subject to a penalty, not exceeding £10, for breach of it.

Workers who are not members of a union cannot, as has been seen, refer any dispute to a board or the court, but it must be noted that a union of workers can thus refer questions concerning the relation of any employer in its own industry, although none of its members are in his employment. It must further be noted that an award of the court (though not a settlement of a board) is binding, not only upon the parties primarily concerned, but upon all persons who, while the award is in force, are engaged in the same industry within the same district.

It remains to notice the provisions as to the application of the Act to employment on Government railways; these seem to have this singular result,

that workers on Government railways may apply to the Court of Arbitration, but their employer may not.

Land for Settlements Consolidation (No. 53).—This Act consolidates and amends the Land for Settlements Act, 1894, and four amending Acts. It authorises and regulates the acquisition of land by the Government, by compulsory purchase if necessary, for the purpose of planting settlers upon it. The call for such a power on the part of Government appears to lie in the existence of Crown lands which can be made suitable for settlement by, and only by, the addition of some neighbouring land; but the Act is also intended to provide for the acquisition of sites for workmen's dwellings in towns.

Maori Lands Administration (No. 55).—This Act establishes Maori Land Councils in districts to be determined by the Governor. Each council will be partly appointed and partly elected by the Maoris. A majority of each will be Maoris. The councils will settle questions of title to native lands. Moreover, every alienation of land by a Maori will require for its validity the approval of the council; and the council is to determine how much of the land now belonging to every Maori is requisite for his or her support, and such land is to be absolutely inalienable. Further provision is made for preventing fraudulent purchases of land from Maoris.

Private Industrial Schools Regulation and Industrial Schools Act Amendment (No. 56).—The object of this Act is to bring private industrial schools under effective inspection and to give the Governor powers of making regulations for them.

New Zealand Institute of Surveyors and Board of Examiners.—No. 58 creates an institute of duly qualified surveyors who are to have the exclusive right of acting in that capacity in relation to Crown land and under the Acts affecting titles to land.

Mining Act Amendment (No. 64).—This Act, along with various amendments of the law as to mining claims, contains a provision empowering industrial unions (*vide* No. 51) of workers employed in mines to appoint at their own cost two inspectors from among their members, who are to have the right of inspecting the mines concerned.

Aid to Public Works and Land Settlement.—No 67 authorises the raising of a loan of £1,000,000, of which £800,000 is to be spent in railway construction and development, and £200,000 is for purposes of land settlement and development of goldfields.

Defence Act Amendment (No. 69).—The most interesting provision in this Act is one providing for the creation of an "Imperial Reserve," which may be employed outside New Zealand on occasions sanctioned by Parliament, but at the cost of the Imperial Government.

Deceased Husband's Brother Marriage.—No. 72 legalises marriage of a woman with her deceased husband's brother. It is retrospective, except

where a lawful marriage with another man has intervened, and except in regard to property inherited under the previous law.

New Zealand Ensign (No. 73).—This Act is reserved by the Legislature. It institutes a colonial ensign—viz., the blue ensign with the Southern Cross represented on the fly thereof by four (*sic*) five-pointed red stars with white borders.

Railways Authorisation.—No. 53 authorises the construction of certain specified railways by the Government.

5. QUEENSLAND.[1]

[*Contributed by* W. F. Craies, Esq.]

Acts passed—Public and General, 34.[2]

Commonwealth of Australia.—64 Vict., No. 25,[3] provides for the election of the six senators and nine representatives to which Queensland is entitled by the Australian Commonwealth Act, 1900.[4] The State forms a single electorate for the election of senators,[5] and is divided into nine divisions, each returning one M.P. The electors are those competent to vote at elections for the State Legislature. The rule of one man one vote is applied.

Finance.—Nos. 1, 4, 5, and 23 are Appropriation Acts.

64 Vict., No. 24, authorises the raising of a loan of £2,374,000 by debentures or inscribed stock (repayable not later than January 1st, 1951, and charged on the revenues of the colony) for the public service of the colony, to be applied to railways, telegraphs, defences, public buildings, and expenses in connection with water supply, local loans, and sugar works.

64 Vict., No. 26, empowers the Governor in Council by proclamation, at any time within three months before the imposition by the Commonwealth of uniform duties of customs, to reduce the customs duties on unmanufactured tobacco and the excise duties on tobacco, spirits, and beer manufactured in Queensland to an amount not below the minimum customs or excise paid on articles of the same description in any other State of the Commonwealth. The Act contains a clause giving purchasers under current contracts the benefit of the reduction.

Judicature.—64 Vict., No. 2, alters the boundaries of the central and northern districts of the State, for purposes of judicature and registration of

[1] The Session of 1900 ended on December 28th, 1900.

[2] Including seven which would in the United Kingdom be classed as local or personal.

[3] This Act was confirmed by the Imperial Act 1 Edw. VII., c. 29, as its validity had been rendered doubtful by omission to reserve it for her late Majesty's consideration.

[4] 63 & 64 Vict., c. 12.

[5] It will thus be seen that Queensland has not availed itself of the right reserved to it by chap. ii., Art. 7, of the Commonwealth Act to divide the State into divisions for the election of senators.

title to land, and makes the necessary consequential provisions for registers of land in the area affected by the change.

64 Vict., No. 6, abolishes the payment of judicature fees and percentages by stamps, and makes them payable in sterling or Treasury notes,[1] and also increases the authority of the judges as to making rules of Court.

Criminal Law.—Some errors detected in the Criminal Code Act of 1899 are corrected by 64 Vict., No. 7. The form of the corrective Act is somewhat novel, the operative clause (s. 1) running thus:—

"*The Criminal Code Act*, 1899, *shall be and is hereby amended by making therein the corrections set forth in the schedule to this Act.*"

The Schedule.

Schedule I.
S. 51.—*Amend the section to read as follows:* . . .
S. 317.—*Amend the definition of the offence to read as follows:* . . .

Exportation of Arms, etc.—No. 8 is an adaptation to Queensland of the Imperial Exportation of Arms Act, 1900 (63 & 64 Vict., c. 44).

Education.—No. 11 amends the State Education Acts, 1875[2] and 1897.[3] The amendments relate to compulsory attendance at school, and provide for attendance at provisional schools and define the school half-year (during which sixty days' attendance must be given by children between six and twelve) as including all schooldays between the first schoolday in January and the last schoolday in June, or between the first schoolday in July and the last schoolday in December. In cases of prosecution for non-attendance, a certificate by the head teacher is made *primâ facie* evidence of the attendances of the child.

Grammar schools for secondary education have been established in Queensland under an Act of 1860 (24 Vict., No. 7), with provision for supplementing voluntary donations by State grants for buildings and annual subventures. 64 Vict., No. 30, provides for the appointment and salaries of inspectors of these schools, who are to be graduates of a British or Australian university. They are subject to the directions of the Minister of Public Instruction, and are to inspect and report on the grammar schools.

Defence.—64 Vict., No. 29, amends the Colonial Defence Acts, 1884–1896, in certain details, of which the most important are the power given to sanction the formation of battalions of cadets for instruction in military drill and training of boys between twelve and eighteen and the new definitions given to the terms "corps" and the "active land force" of the State.

Pacific Cable.—No. 15 authorises the Government to join in the cost

[1] This change is possibly in consequence of the transfer of the Post Office to the Commonwealth. The same stamps were used in the colony for postal and revenue purposes.

[2] 39 Vict., No. 11.

[3] See Journal, N.S., vol. i. p. 104.

of the "all-British" Pacific cable if that does not exceed £2,200,000 and limits the share of Queensland to one-ninth of such cost. The necessary authority is given to co-operate in raising the necessary capital and taking the necessary steps for constructing and maintaining the cable.[1]

Census.—No. 27 altered the date of the quinquennial census to March 31st, 1901, to correspond with the date in the United Kingdom.

Agriculture and Pastoral.—Three Acts—Nos. 3, 14, and 20—deal with pastoral leases. No. 3 amends the Act of 1869[2] as to the sale by auction of the residues of forfeited or vacated leases.

No. 14 authorises the grant of new pastoral leases in certain parts of the unsettled districts of Queensland. It empowers pastoral tenants—*i.e.*, leaseholders under the Acts of 1869 and 1890—and holders of occupation licences to surrender their old leases or licences, and obtain new leases for twenty-one years on certain statutory conditions, including a right by the Crown to resume not more than one-third of the holding without compensation except for improvements.

No. 20 deals with the liabilities of pastoral tenants and selectors (small farmers) as to rabbit-proof fencing and the settlement of disputes on this subject.

Sugar Cane.—No. 17 provides for the establishment and control of stations properly equipped for conducting experiments with regard to sugar cane and sugar and the by-products thereof, and for preventing the spread of disease in cane, and generally for promoting the well-being of the sugar industry. The stations are to be put under a Director of Sugar Works, who is to make enquiries, researches, and investigations as directed by the Government and to report annually. The cost of this experiment is to be defrayed out of a sugar fund, to be created by an assessment not exceeding one penny per ton on every ton of cane received at any sugar works in Queensland, payable by the owner of the works, but ultimately divisible equally between him and the cane-grower.

Harbours.—No. 31 amends the Harbour Boards Act, 1892, particularly by empowering the Crown to let or sell to harbour boards foreshores or lands adjacent to the sea or navigable rivers, and also Crown land under the sea; and also empowers the Crown to give to harbour boards licences to reclaim land below high-water mark and adjacent to land vested in such boards. Land so reclaimed is granted or reserved to the board for the purposes of their powers and duties under the Harbour Boards Acts.

Factories.—64 Vict., No 28 (an Act of sixty-nine sections) amends the law relating to factories and shops, and repeals the Act of 1896.[3] The Act is in nine parts.

Part i. (preliminary) deals with the definitions (s. 4), the constitution

[1] Cf. the Imperial Pacific Cable Act, 1901 (1 Edw. VII., c. 31).
[2] 33 Vict., No. 10.
[3] 60 Vict., No. 29; Journal, O.S., vol. ii. p. 178.

of districts to which the Act may be applied by Order in Council (s. 5), and with the appointment and salaries of factory inspectors (s. 6).

Part ii. deals with the registration of factories and boilers, and inspection by the factory inspectors. The term "factory" includes (*inter alia*)

(i) Any building, premises, or place in or in connection with which *two* or more persons, including the occupier, are engaged in working directly or indirectly at any handicraft, or in preparing, working at, dealing with, or manufacturing articles for or in connection with any trade or for sale, including every bake-house [1] or laundry;

(ii) Any building, premises, or place in which a person or persons of the Chinese or other Asiatic race is or are so engaged;

(iii) Places where steam or other mechanical appliances are used in preparing, working at, dealing with, or manufacturing goods, or in packing them for transit.

Part iii. deals with the entry and inspection of factories and the inspection of boilers, and with enquiries in the case of boiler explosions. As to the latter it embodies the chief provisions of the Boiler Explosions Act, 1882,[2] but the definition of "boiler" is fuller and more elaborate, including gas cylinders and aerated water factories; and there are elaborate provisions for inspecting and certifying boilers.

Part iv. provides for the keeping and inspection of records of employés and wages, and with posting notices with respect to the hours and terms of employment.[3]

Part v. regulates the sanitary arrangements of factories and shops. It corresponds closely to ss. 1–9 of the Imperial Factory and Workshop Act, 1901 (1 Edw. VII., c. 22).

Part vi. deals with the fencing of machinery and with protection against fire. It is framed on the lines of the Imperial Acts of 1878 and 1895,[4] but makes special provisions as to the fencing of hoists and lifts.

Part vii. regulates the age for employment.[5] It absolutely forbids the employment of children under thirteen. Employment of children between thirteen and fourteen is lawful only by special written permission of the responsible Minister of State. The employment of females and of lads between fourteen and sixteen is limited to forty-eight hours a week; and subject to certain powers of exemption, females under eighteen and males between fourteen and sixteen may not be employed between 6 p.m. and 6 a.m. S. 45 creates a minimum wage of two shillings and sixpence a week

[1] "Bakehouse" includes all places where bread or pastry is prepared for sale, and the kitchens of restaurants or cookshops, irrespective of the number of persons employed, even when they are working at home and are members of the same family.

[2] 45 & 46 Vict., c. 22, and see s. 11 of the Factory and Workshop Act, 1901 (1 Edw. VII., c. 22).

[3] Cf. 1 Edw. VII., c. 22, ss. 127-131.

[4] Cf. 1 Edw. VII., c 22, ss. 10–17.

[5] Cf. 1 Edw. VII., c 22, part ii. ss. 23–57.

for persons under twenty-one, and forbids the taking of premiums or other consideration for engaging or employing lads between fourteen and sixteen or females under twenty-one in the making of wearing apparel, boots or shoes.

Part viii. regulates the hours of business in shops on weekdays.[1] Hours are prescribed for the closing of shops (other than certain exempted classes) on each weekday. The hour is 6 p.m., except on Friday (10 p.m.) and Saturday (1 p.m.). Provision is made for fixing a weekly half-holiday. If it is a day other than Saturday, shops may remain open till nine, but must close at six on the preceding Friday, unless that is chosen for the half-holiday. The maximum period of employment for females and persons under sixteen is fixed at fifty-two hours in shops subject to the Act and sixty hours in exempted shops. Employés in the latter class or in hotel bars or registered clubs, and carters for shops or factories, are given a right to a weekly half-holiday (ss. 55, 56).

Part ix. (miscellaneous) forbids contracting out of any liability imposed on occupiers of factories or owners of boilers by the Act, or regulations made under it. S. 60 gives the Governor in Council very large powers to make regulations under the Act.

Public Health.—Two Acts deal with the public health. 64 Vict., No. 9, an Act of one hundred and eighty sections, consolidates with amendments eight statutes relating to public health. It is divided into nine parts.

Part i. (preliminary) provides (s. 4) for the application of the whole or parts of the Act to any district in the State, and abolishes the existing Central Board of Health.

Part ii. deals with the administration of the Act. Subject to the control of the Governor in Council and the Minister charged with the administration of the Act, the central authority for working the Act is a Commissioner of Public Health, who must be a medical practitioner and expert in sanitary science, and is to preside over an advisory Central Board of Health (s. 10). This Board may consist of five members besides the Commissioner appointed by the Governor in Council, of whom at least two must be medical men, and at least one a person who has had experience of local government as a member of a local authority (s. 11). The local authorities must report annually to the Commissioner, who can constitute on his own motion, or under the direction of the Governor, enquiries as to matters relating to public health, or in cases where his sanction is required under the Act. He is also empowered to make regulations under the Act subject to approval by the Governor in Council and to submission of the regulations to Parliament, which regulations must be enforced by the local authority, or, in their default, by the Commissioner, who is also empowered to act in emergencies, of which he is the judge—

(*a*) In respect of powers and duties of local authorities ;

[1] The Lord's Day Acts seem to apply to Queensland.

(*b*) As to abatement and prevention of nuisances, and preservation of water from pollution; and

(*c*) As to places subjected or likely to be subjected to visitation by endemic, epidemic, or infectious disease.

Appeals also lie to him from decisions of local authorities with respect to expenses (s. 21). Every order of the Commissioner or confirmation by the Minister is conclusive, unless the Governor in Council, on memorial by an aggrieved local authority, on enquiry make other order as to the matters in controversy (s. 22).

Provision is also made for the appointment by the Governor in Council of medical inspectors, health officers, public vaccinators, analysts, experts, engineering inspectors, and such other officers as are thought necessary. These officers act on behalf of the State and report to the Commissioner, and on authority by him may attend all meetings of the local authority.

Local authorities may, and may be ordered to, appoint medical officers of health and such other officers as are necessary for the due execution of the Act and regulations, and in certain cases may employ for local purposes the State analysts and experts.

Part iii. deals with sewers and drains and the removal of refuse and filth. It follows in the main the lines of the Public Health Act, 1875, (38 & 39 Vict., c. 53).

Part iv. deals with the sanitation of dwellings, providing for the closing of houses unfit for occupation, the suppression of cellar dwellings, and the supervision of lodging-houses.

Part v. deals with nuisances and offensive trades on the lines of the Imperial Act of 1875.

Part vi. is a fasciculus of provisions adapted from the provisions of the Act of 1875 as to unsound food and the Imperial Acts as to the sale of food and drugs, and bread.

Part vii. deals with infectious diseases, including bubonic plague. It provides for the establishment of hospitals, the notification of disease and the disinfection of infected premises and clothes, and for compulsory vaccination, subject to a privilege in favour of the conscientious objector.

Part viii. deals with infant life protection. It is on the lines of the Imperial Act of 1872 (35 & 36 Vict., c. 38), and does not adopt the policy of the unsatisfactory Act of 1897.[1]

Part ix. (miscellaneous) deals in the main with legal proceedings to enforce the Act, but contains a clause (167) requiring the Government to prepare model by-laws for the purposes for which by-laws can be made under the Act, and to supply them to the local authorites, who may adopt them in whole or in part or make their own by-laws under the Act.

64 Vict., No. 10, amends an Act of 1890 (59 Vict., No. 19) as to contracts with a local authority as to the removal of domestic refuse.

[1] 60 & 61 Vict., c. 57.

Continuation Acts.—There are also three Acts continuing for a limited period the Public Service Board,[1] the Commissioner of Railways,[2] and the Marsupial Boards.[3]

Tramways.—Of the local Acts, four relate to railways and tramways in connection with commercial undertakings.

Ecclesiastical Affairs.—Two relate to ecclesiastical bodies. One (No. 33) is an estate Act allowing the Anglican Synod of the diocese of Brisbane to dispose of an estate known as Bishopsbourne and to apply the proceeds for the benefit of the bishop of the diocese. The other (No. 34) is to enable certain arrangements entered into between the Presbyterian Churches of the constituent States of the Commonwealth to be carried out, with a view to form one federated Presbyterian Church for Australia. The main aim of the Act is, of course, to validate the consequent dealings with Church properly situate in Queensland. The schedule to the Act contains the scheme of union, including a summary of the articles of religion of the proposed federated Church.[4]

Brisbane Loans.—The remaining local Act (No. 32) deals with the issue of municipal debentures by the City of Brisbane.

6. SOUTH AUSTRALIA.[5]

[*Contributed by* A. Buchanan, Esq.]

Acts passed—General, 23; Private, 4.

Language of Acts.—The Language of Acts Amendment Act, No. 741 of 1900, provides that in Acts of Parliament, and all regulations, orders, rules, and by-laws authorised under any Act of Parliament, expressions referring to writing shall, unless a contrary intention appears, be construed as including reference to printing, typewriting, lithography, photography, and other modes of representing words in a visible form.

Census.—The Census Act, No. 740 of 1900, makes provision for taking a census of South Australia in the year 1901.

Taxation.—The Taxation Acts Amendment Act, No. 734 of 1900, provides that where purchase money or rent has been reduced under the provisions of the Crown Lands Amendment Act, 1898, the assessment for land tax shall be proportionately reduced, and any over-payment credited against future land tax.

[1] Journal, 1897, O.S., vol. ii., p. 174.

[2] Journal, 1897, O.S., vol. ii., p. 179.

[3] Journal, 1898, N.S., p. 104.

[4] The whole Act is a curious illustration of the difficulty experienced by ecclesiastical bodies in avoiding occasional resort to the civil magistrate.

[5] The Session 63 & 64 Vict. here reviewed commenced June 14th, 1900, and ended December 5th, 1900.

Public Service.—The Public Service Classification Board Act, No. 748 of 1900, provides that there shall be a Board of three members, two appointed by the Government and one elected by the public servants (s. 3), to consider and advise on the classification of officers in the public service, and to that end to prepare lists of all public servants, showing their work and duties, the present classification and pay, and the alterations (if any) which the Board considers ought to be made (s. 6). Each officer is to be notified how he is affected, and has a right to apply for a reconsideration by the Board of his case (s. 9), whereupon the Board is to reconsider and report (s. 10), the officer being entitled to inspect and copy such report (s. 11). The duration of the Board is limited to a period not exceeding twelve months (s. 13).

Vital Statistics.—The Registration of Births and Deaths Amendment Act, No. 744 of 1900, permits, with the consent of the Registrar-General or Deputy-General, and on payment of a fee of twenty shillings, the registration of the birth or death of a child after the expiry of six calendar months.

State Children.—The State Children Amendment Act, No. 750 of 1900, extends the cases in which charges against children are to be heard *in camera* (s. 3), enables an officer of the State Children's Council to lay charges against children of being uncontrollable or incorrigible (s. 4), or to apply to vary maintenance orders (s. 7), authorises the secretary of the Council, under the authority of the chairman, or in his absence, of some other member, to exercise in cases of emergency the powers of the Council (s. 9). Before any order in anticipation of the birth of a child is made under the Affiliation Law Amendment Act of 1898, pregnancy must be proved by a duly qualified medical practitioner (s. 10); where confinement expenses are ordered, the money is to be held by the State Children's Council till the birth, or, failing birth, is to be returned to the alleged father (s. 11). Applications under the Married Women's Protection Act, 1896 (s. 14), and cases under the State Children Acts (s. 15), may be made and conducted by officers of, or persons appointed by, the State Children's Council. Justices may enforce orders by imprisonment (s. 16), and children liable to imprisonment for non-payment of money may be sent to a reformatory school instead of to a prison (s. 17).

Workmen's Compensation.—The Workmen's Compensation Act, No. 739 of 1900, is an adaptation of 60 & 61 Vict., c. 37, but extends to seamen (s. 2); it applies to injuries to workmen employed on railways, waterworks, tramways, electric lighting works, factories, mines, quarries, or engineering or building works, or in some employment declared by proclamation, issued on addresses of both Houses of Parliament, to be dangerous or injurious to health or dangerous to life or limb (s. 3), but not to pastoral or agricultural pursuits unless mechanical power is used (s. 14). In all cases of personal injury which disable the workman for at least one week from earning full wages, unless it is attributable and attributable only to the serious

or wilful misconduct of the workman injured, the employer is liable to pay compensation (s. 4), subject to the scales and conditions which correspond to those set out in the first schedule to the Imperial Act, except that, in cases of incapacity from work, the compensation is limited to £300, and in cases of total incapacity the minimum weekly payment shall be seven shillings and sixpence (s. 5 and Sched. 1). Where personal injury is caused by the personal neglect or wilful act of the employer or of some person for whose act or default he is responsible, the workman may at his option take compensation under the Act or take proceedings to recover compensation independently of the Act (s. 6). If, on such proceedings, the Court find the employer is not liable independently of the Act, it is to determine whether he is liable under the Act, and, if so, is to fix the amount of liability, and may set off the costs of the proceedings against the compensation awarded (s. 7). The provisions as to notices (s. 8), contracting out (s. 9), sub-contracting (s. 10), claim over against insurers on bankruptcy of employers (s. 12), and recovery of damages from strangers (s. 13) are similar to the corresponding provisions of the Imperial Statute.

Factories.—The Factories Amendment Act, No. 752 of 1900, reduces the time for giving notice of the occupation of any building as a factory from three months to twenty-one days (s. 1), reduces the number of employés necessary to constitute a factory from six to one, and provides that adjacent buildings grouped in one enclosure shall be deemed one factory (s. 2), defines "apprentice" and "improver" (s. 3), extends the operation of the Act to further places specified in the Act, or which may be defined by the resolution of either House of Parliament, but excepts agricultural and pastoral pursuits (s. 4), requires seven days' notice of intention to close a factory (s. 5), empowers the appointment of a Chief Inspector of Factories (s. 6), extends the powers of inspectors as to inspecting and taking copies of books, pay-sheets, and wages lists (s. 7), and makes obstruction of an inspector an offence under the Act (s. 8). Every occupier of a factory must keep a record of names, work and wages, and the age, if under sixteen, of all persons employed in the factory and of all fines imposed on them, and must affix near the entrance conspicuous notices of (*a*) the name and address of the inspector for the district; (*b*) holidays and working hours; (*c*) copies or abstracts of the Act; (*d*) the name of the occupier; and (*e*) prices and rates of pay affixed by the Board (s. 10). Every person who gives out material for the purpose of being worked upon outside a factory for trade or sale must keep for the information of the inspector a record of the description and quantity of the work and the name and address of the worker and the price paid—which record may be published (including the name and address of the employer) as regards particulars in respect of which a conviction for breach of the Act has been obtained (s. 11). Every person who, outside a factory, wholly or partly prepares or manufactures any article or material for trade or sale must register his name and address,

and every change of address, and answer all questions by the inspector as to his employer and the rates or prices paid (s. 12).

To facilitate the working of the Act and to fix minimum prices and rates for particular trades, the Governor may direct the election of Boards of not less than four or more than ten members, of whom one-half may be elected by and shall consist of registered employers, and the other half by and consist of registered employés, presided over as chairman by a judge or special magistrate appointed by the Governor, members to hold office for twelve months only, a majority to constitute a quorum, and the chairman to have a casting vote (s. 13). The Board shall, as regards the particular business in respect of which it is appointed, fix the minimum price or rate of payment payable to any persons or classes of persons (s. 15), and a copy of such rates shall be furnished to every employé by his employer (s. 16). For outside work the Board shall fix a piecework rate or price only, but for all other work may fix piecework price or rate or a wages price or rate, or both, and shall fix a wages rate for operating at a machine in any factory (s. 17). Rates fixed by a Board are to commence at a date fixed by the Board not earlier than within fourteen days, and to remain in force till altered or revoked by the Board (s. 18). A Board shall also fix the proportionate number of, and lowest rates of pay for, apprentices and improvers (s. 19), and may permit the employment at special rates of old and physically infirm persons (s. 20). Employment at piecework rates or wages below the minimum fixed by the Board, or for longer or different hours, or of an excess of apprentices or improvers, is a breach of the Act punishable by progressive fines and by cancellation of registration on the third conviction, with power to the Board to annul the cancellation—and subject to provisoes in cases of illness and slackness of trade, the allowance of overtime in cases of urgent necessity or breakdown of machinery (s. 21). When the Board fixes a wages rate only, employment at piecework rate is not allowed (s. 25). A Board may, in lieu of fixing a lowest piecework rate fix piecework prices (s. 26), based on the average earning of an average worker working under similar conditions at wages rates fixed by the Board (s. 27). Payment in goods is prohibited (s. 32). Agreements to accept less than the fixed rates are invalidated (s. 33).

No premium is to be paid in respect of female apprentices or improvers in the manufacture of clothing or wearing apparel (s. 35). No person is to be employed at less than a minimum weekly wage of four shillings (s. 38). Passages past moving machinery are to be a clear eighteen inches wide (s. 39). Dangerous machinery has to been fenced and safeguarded (s. 40). Every inspector of machinery under the Act is to be a qualified mechanic (s. 41), and may require machinery (s. 42), and vats, pans, etc., to be safeguarded (s. 43), and the Minister may, on the report of the inspector, prohibit the use of dangerous machines until repaired or altered, and the Governor may prohibit the employment in or about dangerous machinery

of any person under sixteen years of age (s. 44). Hoists and lifts are to be protected (s. 45), and shall not be worked in any factory by any female or by any male under the age of sixteen years (s. 46). No male under eighteen years of age, nor any female, shall clean machinery in motion (s. 47). Notice of any accident is to be given to the inspector (s. 48), who is to enquire and to report to the Minister (s. 49).

Lavatories and fire-extinguishing appliances have to be provided (s. 51). The aggregate hours of labour of women and young persons employed partly in shops and partly in factories are limited (s. 53). The Minister may, in certain cases, require a separate dining or eating room to be provided for employés (s. 54), and may prohibit the use, as a factory, of unsuitable premises (s. 55). Justices, in addition to inflicting penalties for non-conformity, may order the employer to adopt certain means to bring his factory into conformity, non-compliance with which will involve a continuing daily penalty (s. 56). In proceedings under the Act the onus of proof as regards important particulars is placed on the defendant (s. 57).

Early Closing.—The Early Closing Act, No. 749 of 1900, constitutes Adelaide and the surrounding country a "metropolitan shopping district" (s. 6), in which any building, stall, tent, vehicle, or pack in which goods are offered or exposed for sale by retail (s. 2), except chemists, eating-houses, restaurants, ham, fish, fruit, tobacconists', hair-dressers' and confectioners' shops, railway news-stalls, undertakers' and public-houses and wine-shops (Sched. I), shall not remain open for trade after six o'clock p.m. on more than one day in each week; shall close at one o'clock p.m. on either Wednesday or Saturday, at the option of the shopkeeper, and may, if Wednesday is chosen, remain open until nine o'clock on Saturday evening, or, if Saturday is chosen, till nine o'clock on Friday evening. The day chosen for closing at one o'clock may not be altered for three months, and one month's notice of intention to alter must be given (s. 7). Country shopping districts may be proclaimed and times for closing fixed (s. 10) upon a memorial of a majority of the shopkeepers resident therein (s. 9). All assistants in exempted shops are to be allowed a half-holiday from one o'clock on some one weekday of every week except in a week in which there is a public holiday allowed to such assistants (s. 14). Managers and servants are liable for breaches of the Act (s. 16), and a shopkeeper charged with an offence may lay an information against the actual offender, and on proof of due diligence is to be exempt from conviction or fine (s. 17).

Fertilisers.—The Fertilisers Act, No. 747 of 1900, repeals the Acts of 1894 and 1898 and substitutes fresh provisions (s. 2). Every dealer in fertilisers has to notify the Inspector of Fertilisers his place of business and the distinctive names or brands of fertilisers dealt in (s. 4), pay an annual fee in respect of each different fertiliser, with an aggregate maximum of £5 5*s.* per annum, and furnish a certificate of minimum percentages of soluble constituents (s. 5), which may be amended on a week's notice

and payment of a further fee (s. 6). Every person who sells any fertiliser has to give the purchaser an invoice, which is to have the effect of a warranty, showing the origin, description, and soluble constituents of the fertiliser (s. 7). Every package of fertiliser is to be distinctively marked (s. 8). It is made an offence to omit giving such invoice or to give a false invoice or description, or to describe as bone-dust or bone-meal any fertiliser containing less than forty per cent. of tricalcic phosphate derived from bone, or to sell or describe as superphosphate or super any fertiliser containing less than fifteen per cent. of water soluble phosphate and a less total than thirty per cent. of water soluble phosphate and citrate soluble phosphate (s. 9), or to sell a fertiliser which falls short of its certificate of constituents by more than a specified margin (s. 10). Inspectors may be appointed (s. 12), with powers of entering and sampling (s. 13) and analysing (s. 14), and the result may be published in the *Journal of Agriculture*, with the name of the dealer and a copy of his certificate of constituents (s. 16). A buyer of a fertiliser has the right to procure an analysis by an analyst (s. 17) appointed under the Act (s. 21), who is to give a certificate of result (s. 18) which is to be *primâ facie* evidence in proceedings in respect to the article analysed (s. 19), and the cost of the analysis is to be borne by the seller or buyer according to the result of the analysis (s. 20). Tampering with samples is punishable by fine or imprisonment (s. 22). A person convicted in respect of a sale under the Act is to have recourse over against the person from whom he bought (s. 24). The Act applies only to sales of parcels of fertilisers exceeding fifty-six pounds in weight (s. 31).

Distillation.—The Distillation Amendment Act, No. 742 of 1900, authorises the Treasurer to grant licences to distil eucalyptus oil on payment of an annual fee of ten shillings and the licensee's giving security that eucalyptus oil only will be distilled.

Mining.—The Mining Act Amendment Act, No. 751 of 1900, provides for the surrender of salt leases granted under the Crown Lands Act, 1888, in exchange for new leases under the Mining Act, 1893 (ss. 2–6), allows the issue of licences granting a right of search over an area not exceeding five square miles for precious stones, mineral phosphates, oil, and rare metals (s. 6) for twelve months, and to remove not exceeding twenty tons for testing purposes only (s. 10), the licensee keeping employed, for six months at least of the term, one man for each square mile and reporting any payable discoveries (s. 11), and to have a preferential right to a mineral lease, mineral (phosphate) lease, or oil lease of forty acres, one hundred acres, or six hundred acres respectively (s. 12). In future coal, oil, or salt leases, in addition to the annual rent, there is to be reserved a royalty of sixpence in the pound of net profits (s. 14).

Water Conservation.—The Water Conservation Amendment Act, No. 736 of 1900, is incorporated with the other Water Conservation Acts, and fixes a maximum rate of interest to be charged upon loans by the State

Government to Local Water Conservation Boards, and also fixes maximum and minimum rates to be levied by such Boards.

Drainage Works.—The South-Eastern Drainage Amendment Act, No. 737 of 1900, provides that a majority of land-holders, representing three-fourths in value of the land to be improved, may request the construction of certain drains specified (s. 3 and Sched. I.), which, if approved by the Commissioner of Crown Lands (s. 5), may be constructed out of moneys voted by Parliament (s. 7), the cost being deemed an advance from the Commissioner to the landholders to be benefited (s. 7). A Drainage Assessment Board is constituted (s. 8) to assess, within two years of the completion of the drain, the increase in value of land benefited thereby (s. 9), with an appeal within two months (s. 10) to a local Court (s. 11), and to apportion the cost of construction amongst the landholders (s. 12), and, in cases where the land is leased, between landlord and tenant, unless they have agreed (s. 15), such cost being made a first charge upon the land and repayable with interest by forty-two equal annual instalments of £5 11*s.* 6*d.* per cent., commencing three years after the date of the advance, the first three years' interest being capitalised (s. 14 and Sched. VII.).

Bird Protection.—The Birds Protection Act, No. 745 of 1900, declares a perpetual close season for certain species, no close season at all for other species, and various close seasons of part of the year in respect of all other species, and empowers the proclamation of portions of Crown lands and the seashore and public reserves as "bird protection districts" (s. 3). Killing, possessing, selling, or exporting protected birds, and destroying or selling their eggs, or selling articles made from their skin or feathers, are made offences (s. 4) punishable by progressive fines (s. 8), which, when recovered, are payable one-half to the South Australian Zoological and Acclimatisation Society and the other half to the Government (s. 9). Swive and punt guns and the like are declared illegal devices and forfeited (s. 5).

Vermin Destruction.—The Vermin Districts Amendment Act, No. 746 of 1900, alters the definition of a vermin-proof fence (s. 3), regulates the liabilities and obligations of adjoining owners in respect of such fences (ss. 5–12), regulates the constitution, functions and duties of vermin district boards (ss. 14–27), provides for the payment of rewards for the destruction of foxes in fox-infested districts (s. 28), and reduces the number of persons necessary to constitute a "vermin trust" from six to three (s. 29), and allows new members to join in existing "trusts" (s. 30) and receive loans from the Government for vermin-proof fencing purposes (s. 31).

Seed Wheat.—The Seed Wheat Amendment Act, No. 743 of 1900, provides that in cases of hardship the time for repayment may be extended over a further term of five years, and that interest may be remitted wholly or in part.

Renmark Irrigation Settlement.—The Renmark Irrigation Trusts Loan Amendment Act, No. 733 of 1900, increases the powers of the Renmark Irrigatian Trust No. 1 in respect of lands on which rates are in arrear, and assimilates the trust in its powers and functions to a "district council," authorises a further loan of £16,000 to the trust for the construction of irrigation works, and reduces the rate of interest and postpones the payment of principal moneys secured by existing mortgages of lands within the trust.

7. TASMANIA.

[*Contributed by* J. W. Fearnsides, Esq.]

Acts passed—Public, 52; Private, 26.

Imprints.—No. 1 requires that every person possessed of a printing press shall give notice of the fact to the Chief Secretary of the colony. The printer's name must appear upon every published work, and he must keep a record of the names of those who employ him; no person is allowed to distribute unauthenticated printed matter. Newspapers are exempt from the last three provisions, and there are general exemptions in respect of bank notes, bills of exchange, bills of lading, and similar documents.

Demise of the Crown (No. 2).—A Parliament shall not be determined, nor shall any appointment made by the Governor be vacated, nor any civil or criminal proceeding or any contract made with or on behalf of the Crown be in any way affected, by the death of the Sovereign.

Constitution Amendment Act.—No. 5 enacts that no member of either House of the Parliament of the Australian Commonwealth shall be capable of sitting as a member of either House of the Tasmanian Parliament.

Appropriation Acts.—Nos. 6 and 74.

Married Women's Property.—No. 7, an amending Act. Every contract entered into by a married woman on her own behalf shall be deemed to bind her separate property, whether she is or is not possessed of any at the time of making the contract, provided that she be not restrained from anticipating. A married woman may be ordered to pay costs out of property which is subject to a restraint upon anticipation, such payment being enforced, if need be, by the appointment of a receiver and (or) sale of the property. A husband shall not be liable for any tort committed by his wife.

Interpretation of Acts of Parliament.—No. 8 consists of rules for the construction of Acts of Parliament of the colonial Legislature which will tend to make the language used more concise.

Explosives (No. 15).—An amending and consolidating Act, which concerns itself minutely with the importation, carriage, and storage of explosive substances, including those used for blasting purposes.

Crown Lands.—No. 21 facilitates the sale of Crown lands. No

person is entitled to purchase upon credit more than three hundred and twenty acres at any one time.

Defence.—No. 23 places the limit of the active force of the colony at three thousand men in time of peace. It also gives power to the Governor to sanction the organisation of rifle associations and of associations for the purposes of drill, and to disband any of the same if he considers it necessary; he may also sanction the provision of arms and clothing (or a money allowance in lieu of clothing) for such clubs or associations. The form of the oath of allegiance is also altered.

Opossum (No. 25).—All hunting of this animal is absolutely forbidden for two years.

Suppression of Smoking by Juveniles.—No. 27 visits with penalties any person under thirteen years who smokes tobacco in any form in a public place and any tobacconist who supplies such a person with tobacco.

Automobiles.—No. 35 has for its object the conditions under which light locomotives may be used, one of which fixes the maximum speed allowed on a public highway at fourteen miles an hour.

Tasmanian Contingent for South Africa.—No. 53 makes a supplementary appropriation for the payment and maintenance of this force.

Mines and Mining (No. 61).—A long and important consolidation of the mining law of the colony, containing 211 sections. The chief of these are—

SS. 14–19, which deal with prospectors' licences and the privileges conferred thereby.

SS. 20–48. Leases for mining purposes, and the conditions under which they are granted, and the circumstances in which they may be forfeited.

SS. 49–57. Water rights.

SS. 58–79. Mining operations, including the right of a holder of a mining lease to acquire an area of thirty acres from an adjoining owner as a tailings area, also rules defining the limits of the right of support from adjoining lands.

SS. 81–106. Regulations for working mines with a view to the safety, health, and comfort of the miners; powers and duties of mine inspectors; no person to be employed for more than eight hours at any one time; regulations for ventilation, blasting, fencing of shafts and machinery, protection of persons ascending and descending shafts; employer to compensate employé injured through non-observance of the Act.

SS. 107–115. Drainage and pumping.

SS. 116–119. Crown land or water-courses may be proclaimed for place of deposit for tailings, and in the latter case machinery is provided for compensating the riparian owners.

SS. 120, 121. Where a mineral lease exists, the lessee or a stranger

may prospect the land for gold, subject in the case of a stranger to the proviso that the mineral lessee be not interfered with in his mineral working.

SS. 126–130. Lessee's rights to reserve part of leased land for (1) growing timber, and (2) for mining purposes.

SS. 131–141 create a Mining Board and invests it with certain powers and duties.

SS. 142–174. Administration of justice in matters falling under the Act.

SS. 175–181. Arbitrations arising under the Act and the procedure incident thereto.

S. 190. Minerals unlawfully removed from Crown lands may be seized and confiscated.

Civil Service (No. 69).—A comprehensive Act concerned with the classification, pay, promotion and establishment of a provident fund for officers of the civil service. The working of the Act is entrusted to a board of five members elected by the officers of the civil service. Every officer, with certain exceptions, must subscribe to the provident fund.

Bills of Sale (No. 70).—Like No. 61, an important amending and consolidating Act.

S. 1 is the interpretation clause.

S. 5. Unregistered bill void.

S. 7. Where bill is made subject to a condition not contained therein, such condition must be written upon the bill before it is registered, otherwise the bill is void.

S. 9. Notice of intention to give a bill must be lodged with Registrar fifteen days before registration.

S. 11. A creditor of the intending grantor may enter a caveat against registration.

SS. 12–17. Caveat to be notified to grantor, who may issue a summons against the caveator, and the proceedings and procedure thereafter.

S. 18. A bill given by way of security for the repayment of money to be renewed every two years, otherwise it becomes void.

SS. 23, 24. Registrar to keep books (1) containing names of persons giving notice of intention to make a bill (2) and of those who have registered bills.

S. 28. Search of the last two mentioned books to be allowed.

SS. 29, 30. Satisfaction of the whole or part of a bill to be registered.

S. 40. Certain covenants to be implied in every bill of sale.

S. 41. Certain additional covenants to be implied in every bill of sale given by way of security.

8. WESTERN AUSTRALIA.

[*Contributed by* R. W. Lee, Esq.]

Acts passed.—49.

Constitution Amendment (No. 5).—This Act disqualifies members of the Federal Parliament for nomination or election to the Parliament of Western Australia. A member of the State Parliament elected to the Federal Parliament vacates his seat in the former on taking his seat in the latter.

Federal House of Representatives (No. 6).—Western Australia is divided into five federal electorates, returning one member each to the Federal House of Representatives. Each electorate is sub-divided into electoral districts. The laws relating to State elections are to apply, *mutatis mutandis*, to federal elections, except that no elector is to vote more than once at one and the same election.

Supply and Appropriation.—Nos. 1 and 4.

Customs (No. 3).—Duties upon live stock and frozen and chilled meat other than pork are repealed. Persons selling imported frozen or chilled meat are to label the same as such—penalty not exceeding £50.

No. 14.—The Commonwealth of Australia Constitution Act by s. 95 permits Western Australia for five years after the imposition of uniform customs duties to impose customs on goods imported from other States of the Commonwealth. This Act continues existing duties in force.

Municipalities (No. 8).—This is a long Act in twenty-three parts consolidating and amending the law.

Post Office Savings Banks (No. 10).—The postal service, but not the Post Office Savings Bank, being transferred to the Commonwealth by the Commonwealth Constitution Act, this Act places the Post Office Savings Bank under the management and control of the Colonial Treasurer. The Colonial Treasurer may with the approval of the Governor arrange with the postal authorities of the Commonwealth for the continued employment of officers of the Post Office in connection with the Post Office Savings Bank. Failing this, he is to appoint a separate staff of officers.

Noxious Weeds (No. 11).—This Act repeals the Spanish Radish and Scotch Thistle Prevention Act, 1874. Noxious weeds are the plants mentioned in the schedule, and such other plants as the Governor shall declare to be noxious. Owners and occupiers are to destroy noxious weeds after notice. If they fail to do so, a penalty is incurred, and authorised persons may enter for the purpose.

Government Securities (No. 12).—This is "An Act to Facilitate the Investment in Western Australian Government Securities of Trust and other Funds in the United Kingdom," and may be cited as the "Trustees' Colonial Investment Act, 1900." The Colonial Treasurer is authorised to pay in London without further appropriation any sum of money adjudged by a

Court in the United Kingdom to be payable by the Government of Western Australia in respect of any of its Government securities, and also to make any payments to enable the Registrar to comply with orders under s. 20 of the Colonial Stock Act, 1877, of the Imperial Parliament.

Public Loan (No. 13).—This Act authorises a loan of £790,000 for public works and other purposes.

Distillation (No. 16).—This is a long Act amending and consolidating the laws relating to distillation.

Trustees (No. 17).—This is a consolidating Act modelled upon the Imperial Trustee Act of 1893, together with the unrepealed section of the Trustee Act, 1888.

Export of Arms (No. 18).—This corresponds to the Imperial Exportation of Arms Act, 1900.

Conspiracy and Protection of Property (No. 19).—The preamble recites that doubts have arisen whether the Acts in force in England at the time of the settlement of Western Australia are in force in the colony, and that it is desirable to remove such doubt by the introduction of legislation in lieu of the provisions of the said Acts. The Act reproduces in the main the provisions of the Imperial Act of 1875, together with s. 2 of the Trade Union Act, 1871. In the sections corresponding to ss. 4 and 5 of the Imperial Act the words "wilfully and maliciously" are omitted, and the penalty is only incurred when a person breaks a contract of service without giving seven days' notice of his intention to do so.

Industrial Conciliation and Arbitration (No. 20).—This is an Act modelled upon a New Zealand Act of 1894.

Part i. provides for the *Registration* of industrial unions of employers and of workers. Councils representing several industrial unions may be registered as industrial associations. Such bodies upon registration become incorporated, and may sue and be sued in their registered names.

Part ii. relates to *Industrial Agreements.* The parties may be (1) industrial unions, (2) industrial associations, (3) employers. An agreement is not to be made for a term exceeding three years. A duplicate is to be filed in the Supreme Court office. No industrial agreement shall be invalid merely by reason that it is in restraint of trade.

Part iii.—*Conciliation and Arbitration.*—The Governor may create industrial districts. Each district is to have a Board of Conciliation chosen by the industrial unions, with equal representation of employers and workers, and a chairman in addition chosen by the Board, or in default by the Governor. The members hold office for three years. The Board is to enquire into any industrial disputes which shall be brought to its cognisance, either in pursuance of an industrial agreement or in the method provided by the Act. If the Board reports that it is unable to effect a settlement, either party may require a further reference to the Court. After reference to a Board or the Court there shall be no strikes or lock-outs until a final

decision is given. The penalty is up to £500 in the case of an industrial union, up to £20 in the case of an individual. A summary order for payment may be made by Board or Court, and the person shall be specified to whom such penalty shall be paid.

The Court of Arbitration.—There is to be one Court of Arbitration for the whole colony, to consist of three members, one each to be appointed on the recommendation of the councils of the industrial associations of workers and of employers respectively. The president is to be a judge of the Supreme Court. The members of the Court are to hold office for three years. The award shall be made within one month after the Court has begun to sit, and is to avoid technicality. The Court may in its award or by subsequent order determine what shall constitute a breach of the award, and may impose a penalty not exceeding £500. The award is to specify the industrial unions, associations, and persons to be bound by it, and the period, not exceeding two years, during which its provisions may be enforced.

The Act concludes with provisions for the enforcement of awards and other matter supplemental and miscellaneous.

Public Service (No. 21).—This deals with the constitution of the public service, and with the appointment, duties and privileges, and removal of public servants.

Drainage of Land (No. 22).—The Governor may, on petition from the majority of ratepayers in any part of the colony, constitute a drainage district. Drainage Boards will be elected for each district to have control of drainage works, with power to levy a rate.

Goldfields (No. 23).—The first part of this Act provides for the granting of "Miners' Homestead Leases." These provisions will apply only to such goldfields as the Governor may from time to time direct. The extent of land to be leased to any one person within one goldfield is not to exceed twenty acres, if within two miles of a town boundary; if outside such limit, five hundred acres. The Governor may resume a miner's homestead after six months' notice to the lessee, who is entitled to compensation.

The second portion of the Act amends the Goldfield Acts, 1895–8.

Carriage of Mails (No. 26).—Railway companies are to convey by any train mails tendered for conveyance.

Parliament: Payment of Members (No. 32).—Members of Parliament are to receive a salary of £200 per annum. Officials are not to be paid except so far as their salary falls short of the sum of £200.

Kangaroos (No. 33).—The Governor may by proclamation allow kangaroos to be killed for food only during a close season and on native game reserves.

Slander of Women (No. 36).—Words imputing unchastity or adultery to be actionable without special damage (54 & 55 Vict., c. 51).

Compensation for Injuries (No. 37).—The Act of the Imperial Parliament

commonly known as Lord Campbell's Act (9 & 10 Vict., c. 93) purports to be "An Act for Compensating the Families of Persons Killed by Accidents." It confers a right of action on the personal representatives of a person whose death has been caused by a wrongful act, neglect, or default, such that if death had not ensued that person might have maintained an action. The right conferred is for the benefit of the wife, husband, parent, and child of the deceased. By an amending Act of 1864 (27 & 28 Vict., c. 95), if there is no personal representative, or if no action is taken by personal representatives within six months, persons beneficially interested may sue in their own names. Also by s. 2 money paid into Court may be paid in one sum without regard to its division into shares.

Lord Campbell's Act was adopted in Western Australia by 12 Vict., No. 21. The present Act enacts for the colony the provisions of the Imperial Act of 1864.

Criminal Law Amendment (No. 29).—This Act amends the Criminal Law Amendment Act, 1892, in ss. 4, 6, 8, 13, and 15.

Other Amending Acts.—No. 7 amends the Game Act, 1892; No. 9 the Truck Act, 1899; No. 15 the Land Act, 1898; No. 24 the Railways Amendment Act, 1881; No. 25 the Health Act, 1898; No. 28 the Bills of Sale Act, 1899; No. 30 the Lands Resumption Act, 1894; No. 31 the Registration of Births Act, 1894; No. 39 the Patent Acts, 1888–1892.

9. VICTORIA.

[*Contributed by* Henry E. Gurner, Esq.]

64 Vict. 1900: Acts passed—56.

The Federation Proclamation and Commonwealth Act.—In the present volume of Statutes is set out the Royal Proclamation constituting as a Federal Commonwealth under the Federation Act the six colonies of Australia under the title of the Commonwealth of Australia, and declaring the date of its coming into existence as January 1st, 1901. After this follows the Commonwealth of Australia Constitution Act, being 63 & 64 Vict., c. 12 (Imperial Statute), also set forth at length.

Equipment of Naval Contingent (No. 1657).—This Act is one somewhat similar to several passed in the last Session of Parliament as regards South Africa, and provides for a sum of £20,000 for equipping a Victorian Naval contingent for serving with her Majesty's forces in China.

Exportation of Arms.—No. 1660 is for prohibiting the exportation of arms, ammunition, military and naval stores, and other articles proclaimed by the Governor in Council which in his opinion are capable of being used as such.

Bank Holidays.—No. 1661 is an Act relating to the observance of certain public and Bank holidays. It provides that when the birthday

of her Majesty or her successor, or of the Prince of Wales for the time being, falls on any day other than a Monday, then the following Monday should be observed as a public holiday and Bank holiday instead of such day. By s. 4 of the same Act, the Governor in Council is empowered to proclaim January 26th and April 21st, or either of them, in each and every year as a public and Bank holiday.

Military Service of Police in South Africa (No. 1666).—This is an Act relating to military service in South Africa by members of the police force or public service. It provides, in s. 3, in the case of the police force, that if any one resigned his office for the purpose of serving in her Majesty's regular forces in South Africa, the Governor in Council or the Chief Commissioner (as the case might be) might, within six months of that person's discharge, appoint such person to the like position in the force which was held by him before his resignation. By sub-s. 2 of s. 3 such military service is to count as service in the police force, both for the purpose of ascertaining his seniority and for determining any gratuity, pension, or retiring allowance to which either his widow, children, or other relation might at any time become entitled under the Police Regulation Acts.

By s. 6, in the case of persons in the public service, they were to be similarly reappointed, and were not to be required to pass any examination or test, except as to their physical and mental capacity, and the military service was to count as public service in a manner similar to that relating to the police.

By s. 7 the franchise of such persons was preserved, and the residence in South Africa and China, including the time occupied in travel to and from Victoria, was to be treated as residence in Victoria.

No. 1667 is an Act of local interest, viz., for the purpose of distributing seats for the Federal House of Representatives, of which twenty-three were allotted to Victoria by the Imperial Statute (63 & 64 Vict., c. 12).

Census (No. 1669).—The Census Act, which appoints March 31st, 1901, for the taking of the census, provides, in addition to the particulars required in the Imperial census, that the occupier shall specify to the best of his belief, if he cannot do it with absolute accuracy, the area of his land and the number of his live stock, and also shall, if he do not object, state his religion. Particulars also were required as to the place where children under the age of fifteen were receiving their education.

Local Acts.—The Acts intervening between 1669 and 1684 are of no public interest, and mainly relate to the tramways, railways, and the acquisition of lands for local purposes.

Marriage (No. 1684).—An Act to amend the Marriage Act, 1890. By s. 3 of this Act the justices were empowered to make an order against a husband and against the father of a bastard child for maintenance and confinement expenses of the mother of the child. By s. 4 any pregnant woman might apply for and justices might make an order against

the father of her child for the confinement expenses, and such order was not to exceed £10. By s. 6 the order was to specify a date not later than five months when the order should lapse if the child were not born. The money is always to be retained by the clerk of the petty sessions, and in event of no child being born, it is to be returned to the alleged father. By s. 8 the uncorroborated evidence of the woman is insufficient to obtain this order.

Wine Adulteration.—No. 1692 is an Act to prevent the adulteration of wine. By s. 4 no person is allowed to manufacture or have in his possession or sell, advertise, offer, keep, expose, or deliver for sale or exchange, or authorise, direct, or allow the sale under the name of wine or dry wine, or sweet wine or sparkling wine, or under any name popularly and commercially used as a designation of wine, to which before, during, or after the making of the same any "foreign substance" has been added.

By s. 6 the term "foreign substance" is defined as follows, and others may be added by the Governor in Council, viz.,—ethers, essential oils, bitter almond, cherry, laurel, flavouring substances, alkaloidal substances, compounds of barium, fluorine, magnesium, strontium, bismuth, arsenic, lead, zinc, aluminium, tin, copper, borax, derivatives of naphthol (abrastol, etc.), sulphuric acid, formalin or formaldehyde, salicylic acid or other antiseptics except sulphurous acid, as provided for hereinafter, glycerine, saccharine, dulcini, sucrovin, crystallose, impure starch, sugar, impure spirits containing fusel oil or aldehydes, organic or mineral colouring matters, germs, and any mixtures containing any of these substances; but by sub-s. (*b*) of s. 6 "foreign substance" shall not include the following or others declared by the Governor in Council:—

(1) The addition of yeast or leaven;
(2) The addition of substances such as isinglass, gelatine, eggs, albumen (not including blood or milk as such), Spanish clay, kaolin, or tannin, for the purpose of clarification.
(3) The addition of common salt, provided the chlorine calculated as sodium chloride does not exceed thirty-five grains per gallon.
(4) Sulphate of lime, when the potassium sulphate does not exceed one hundred and forty grains per gallon;
(5) Tartaric acid;
(6) The addition of natural products of grape vine leaves or flowers;
(7) The addition of pure wine spirit of age not less than six months, for the purpose of increasing the alcholic strength, to the extent not exceeding twenty-eight per cent. of proof spirit or sixteen per cent. of alcohol by volume in the case of dry wines, of thirty-five per cent. proof spirit or twenty per cent. of alcohol by volume in the case of sherries, ports, and sweet wines, alcohol in either case being absolute alcohol of specific gravity 0·7938, and measured at the temperature of 60° Fahrenheit.

By s. 7 nothing in this Act is to prohibit the sale of any beverage made from fruit or sources other than fresh grapes, or labelled or branded or designated by any name including the word "wine," provided that the label or brand or designation includes the name of the fruit or source from which it is made and that the name of the fruit or source from which it is made is given on or in the label in letters of the same size as that of the letters of the word "wine."

By s. 8 no person is allowed to manufacture or have in his possession for the purposes of sale, or to sell, advertise, offer, keep, expose, or deliver for sale, any unfermented grape juice to which there has been added any substance the addition of which is prohibited by the Act.

By s. 9 no person shall offer, expose, or deliver for sale any wine unless the bottle is labelled with the name of the wine and the name and address of the vendor or bottler.

By s. 10 no person is allowed to sell sparkling wine in which the excess of carbonic acid gas arises from direct admixture of the same unless the bottle be labelled "carbonated" in the same sized letters as that of other words on the label. SS. 11 to 18 provide the means for rendering the Act workable. S. 19 provides a penalty not exceeding £5 for the first offence, up to £20 and three months' imprisonment for a subsequent one. S. 20 gives the Governor in Council power to make any further regulations for carrying the Act into effect.

Traction Engines (No. 1693).—An Act for regulating the traffic of traction engines. By s. 5 no engine is to be driven at night without a man one hundred yards in front of it to warn people of its approach.

By s. 6 badly packed stuffing boxes, leaky safety valves, and blowing off steam (except in case of accident) are prohibited.

By s. 7 two men must be with it—one to drive, having a licence so to do, the other to steer the engine and assist vehicles in passing.

By s. 9 traction engines may travel between sunrise and sunset through any city, borough, or shire, but before doing so the owner or driver must give from three to forty-eight hours' notice to the town clerk or shire secretary of his intention, and on receiving such notice the town clerk may order the driver of the engine to proceed by a certain route, and the speed shall not be more than two and a half miles per hour.

By s. 10 any injury to the highway done by the engine is to be made good by the owner or driver, and it shall be lawful for any municipal officer or policeman to detain the engine till the repairs are done or paid for.

S. 11 provides for licences for traction engine drivers at a fee of 5*s*.

By s. 13 a driver when required by any person driving is compelled to stop his engine till they have passed.

By s. 15 penalties not exceeding £10 are provided.

By s. 16 each engine must be fitted with a spark arrester.

Equipment of Military Contingent (No. 1698).—This Statute provides

for £45,000 being raised for the equipment of the military contingents raised in Victoria for service in South Africa.

Voting by Post (No. 1701), entitled "The Voting by Post Act," 1900.—By s. 2, as soon as the seat of any member of either House becomes vacant, or after dissolution, notice is to be given in the *Gazette* and in two Melbourne newspapers and one circulating in the district in the form in the first schedule to the Act.

By s. 3 any elector who satisfies the returning officer (*a*) that he resides at least five miles from the nearest polling booth at which he is entitled to vote, or (*b*) that he has reason to believe either that on the polling day he will not be within five miles of the polling booth at which he is entitled to vote, or that on account of ill-health and infirmity he will be prevented from voting personally at such polling booth, may apply to the said returning officer for a postal ballot paper.

By s. 5, if the returning officer is satisfied as to the applicant's right to vote, he is to send him a postal ballot paper. If he is not satisfied, he sends the voter a notice that he, the returning officer, not being satisfied as to the applicant's right to vote, he, the applicant, must attend personally to give his vote.

By s. 8 the returning officer shall, on the electoral rolls, record the fact that a postal ballot paper has been posted to such applicant, and the date of the posting. If possible, the returning officer is to notify before the ballot to the presiding officer, and to every deputy returning officer at every polling place at which a roll is used on which the applicant's name appears, the fact of the issue of such postal ballot paper, but in any event he is to notify it immediately.

S. 9 prescribes the mode of voting with a postal ballot paper. The voter is to produce it, not filled up, to any postmaster or officer within the voter's electoral province. Having done so, he is then to write the name of the candidate for whom he votes, but the postmaster or officer is not to see the same. He is then to unfold the paper and sign his name in the presence of the postmaster or officer, and the voter is then to enclose the ballot paper in the envelope provided, and hand it to the postmaster or officer. By sub-s. 2 the postmaster or officer is, as soon as practicable, to post the ballot paper to the returning officer, who is to keep it till the close of the poll.

By s. 13 each voter is to be asked before voting if he has received a postal ballot paper; and if such voter, having tendered his vote, refuses or omits distinctly to answer the same, he is liable to a penalty not exceeding £20, or a month's imprisonment. If he makes a false answer, there is a penalty imposed not exceeding a fine of £50, or three months' imprisonment.

By s. 14, on the close of the poll the returning officer is to produce unopened all envelopes containing postal ballot papers up to the close of the poll, and such envelopes are to be opened in the presence of scrutineers

and the poll clerk, and no one else. They shall then be dealt with as follows:

(*a*) The returning officer shall produce all applications for postal ballot papers.

(*b*) The returning officer, without unfolding each postal ballot paper, or allowing it to be inspected, shall compare the signature of the voter on the counterfoil with the signature to the application, and allow the scrutineers to inspect the same; and the returning officer shall determine whether or not the signature on the postal ballot paper is that of the applicant.

(*c*) If the postal ballot paper is allowed by the returning officer, he shall tear off the counterfoil without seeing the name of the candidate or candidates voted for, and shall insert the folded postal ballot paper in a ballot box separate from that used during the polling, and when all such postal ballot papers have been so inserted, the counting of the votes so recorded shall commence.

(*d*) The list of votes received by each candidate shall show separately the votes tendered personally and the votes given by post.

(*e*) If the returning officer disallows a postal ballot paper, it shall be included in a sealed packet of ballot papers set aside for separate custody and shall be transmitted to the Clerk of the Legislative Council or Assembly (as the case may be) in case the same may be sent for and examined by the Committee of Elections and Qualifications for the Legislative Council or Assembly.

By s. 15 the returning officer's decision can alone be reviewed by the Committee of Elections and Qualifications of either House.

By s. 16 letters sent pursuant to this Act and not delivered within five days are to be returned to the sender.

SS. 17 *et seq.* state what are the offences under this Act.

S. 22 imposes a penalty not exceeding £50 on any person who tries to induce any one in his employ to obtain a postal ballot paper with the intention of influencing such person by bribery or intimidation to record his vote in favour of any particular candidate.

By s. 24 the Act is to come into force on December 1st, 1900, and to continue in force for three years.

10. WESTERN PACIFIC.

[*Contributed by* W. F. Craies, Esq.]

Queen's Regulations passed—3.[1]

Native Passenger Traffic.—No. 1 regulates passenger traffic in the Gilbert and Ellice Islands Protectorate, so far as regards aboriginals of the islands or Pacific Islanders there resident, and makes special provision against the conveyance, except under conditions, of female natives.

[1] See Journal, O.S., ii., p. 202.

Guano.—No. 2 prohibits the collection or removal of guano, etc., from waste or unoccupied lands in the Protectorate without licence of the High Commissioner or Resident Commissioner. It extends to Paanopa or Ocean Island (lat. 0° 52′ S., long. 169° 35′ E.) as well as to the Gilbert and Ellice groups.

Solomons (Waste Lands).—No. 3 prohibits the occupation of waste lands in the Solomon Islands Protectorate[1] without a certificate granted by the High Commissioner on application made through the Resident Commissioner.[2]

V. SOUTH AFRICA.

[*Contributed by* Israel Davis, Esq.]

1. CAPE OF GOOD HOPE.

Acts passed—21.

The proverbial silence of the laws in time of war is exemplified in South African legislation. In 1899 forty-eight Acts were passed.

Supply.—Nos. 1, 2, 5, and 10 are Appropriation Acts providing respectively £244,000, £1,000,000, £600,000 and £4,108,720. By No. 9 a loan of £1,293,800 was authorised for the purposes of railway and other works, and to provide for loans under the Local Works Loans Acts and Irrigation Acts. No. 16 authorises a loan of £250,000 for the purposes of partially meeting claims to compensation that may be assessed by any commission duly authorised to make enquiry into the loss sustained by inhabitants of certain districts of the colony which have been subject to incursion by the armed forces of the late South African Republic and Orange Free State, or in which martial law has been duly proclaimed.

Indemnities.—By No. 6 (Indemnity and Special Tribunals Act) the Governor and the officer commanding her Majesty's forces, and all persons acting under their authority and in good faith in regard to Acts during the existence of martial law, are indemnified. Provision is made for the trial and punishment of persons who have taken up arms against the Queen or otherwise assisted her enemies, and for compensating persons who have sustained direct loss and damage through military operations or through the acts of the enemy or of rebels. The Governor is empowered by proclamation to establish a special Court for high treason and political crimes. Two, at

[1] As to this group, see Journal, N.S., i., p. 519. The Solomon Islands Protectorate was by proclamation of the High Commissioner of October 6th, 1900, extended to include the islands taken over from Germany under the Convention of London of November 14th, 1899. Parl. Paper, 1899, c. 7. See Journal, N.S., ii., 584.

[2] The Regulation contained a schedule which was repealed in 1901 by a Regulation (No. 1), which substituted a fresh schedule.

least, of the members of the Court are to be judges of the Supreme Court of the colony and the third should be either such a judge or a barrister or advocate of the Supreme Court, Eastern Districts Court, or High Court of Griqualand, and of not less than ten years' standing, who was, at the date of the passing of the Act, duly practising as such advocate in the colony and is not a Member of Parliament. The Governor is empowered to appoint commissioners, in numbers such as to form some multiple of three, to enquire into and determine all cases of high treason or crimes of a political character, committed before or within six months after the passing of the Act, which the Attorney-General should require any three of them to enquire into.

By No. 18 the Governor may validate anything irregularly done in connection with the election of members of local authorities, etc. By No. 21 all notices issued by the Governor between October 11th, 1899, and this Act, authorising the suspension of parts of the Customs Act, are confirmed and made law, and the non-payment of duties is legalised.

Census.—By No. 11 provision is made for a census to be taken of the number of persons and the number of each kind of live stock upon such day in 1901 as the Governor may proclaim. But in default of proclamation the census shall not be taken save upon a date in 1901 or 1902 which may be fixed by both Houses of Parliament.

Military Burial Grounds.—By No. 14 the Governor is authorised to expropriate and maintain as a burial ground any land in which officers, non-commissioned officers, or men belonging to the Imperial or colonial forces, or to the forces of the late Orange Free State and South African Republic, have been buried. But no such ground shall be used for the burial of anybody without the consent of the Governor and the local authority. The Governor may acquire rights of way. Compensation is to be paid under the general Act of 1882. Rights and land acquired by the Governor may be transferred to her Majesty's Secretary for War on payment of the cost. The Governor, at the request of the Secretary for War, may cause land expropriated for the purposes of the Act to be enclosed, maintained, and kept in an orderly condition.

Exportation of Arms.—By No. 15 the Governor is authorised to prohibit the exportation of arms, ammunition, military and naval stores, and any article which he shall judge capable of being converted into, or made useful in increasing the quantity of, arms, ammunition, or military or naval stores, to any place whenever he shall judge such prohibition expedient to prevent such arms, etc., being used against the subjects or forces of the Queen or against forces engaged in military or naval operations in co-operation with hers.

Railway, Harbour, and Private Acts.—No. 19 provides for the acquisition and extension of railways, and No. 20 for a loan of £964,839 for improving the harbour works of Table Bay, Port Elizabeth, East London, and Mossel Bay. Three other Acts are in the nature of private Acts.

2. NATAL.

Acts passed—15.

Indian Immigration.—By No. 1 some small amendments of the Indian Immigration Law of 1891 are made. An Indian immigrant who has made a complaint is to be taken back to his employer by a messenger, and the cost of such messenger is to be paid by the employer, unless the complaint was frivolous and unfounded (in which case deduction may be made from the immigrant's wages). An immigrant refusing to return to his employer may be punished in accordance with the previously existing law.

Supply.—By No. 4 the Governor is authorised to borrow one million pounds for railways, harbour works, telegraphs, etc. By No. 5 a sum not exceeding £2,942,141 12*s.* 10*d.* is provided for the public service of the colony. By No. 6 a supplementary grant of £3,459 10*s.* 10*d.* in respect of the year 1898–9 is made. By No. 7 a supplementary amount of £154,679 17*s.* 5*d.* for the year 1899–1900 is allowed.

Census.—By No. 8 the Governor may by proclamation order a census in accordance with the provisions of the law of 1880. He may, in addition to providing for a census of the population, also direct a census to be taken of the lands, live stock, and produce of the colony. The Governor may issue special instructions as to the census of the native population.

Pietermaritzburg.—By No. 9 the Town Council are authorised to borrow £175,000 for water supply, tramways, etc., at a rate not exceeding four per cent. By No. 10 they are authorised to transfer to themselves a public outspan of two hundred acres at present held in trust inalienable as an outspan or grazing ground for the use of travellers and the burgesses, the said land being not now necessary for that purpose. By No. 13 the Town Council are authorised to take water from certain sources.

Durban.—By No. 11 a sea-pier is authorised.

Treason.—By No. 14 provision is made for better and more speedy trial of persons accused of treason. Three persons are to be special commissioners to constitute the special Court, and each commissioner shall be a person either qualified to be appointed a judge of the Supreme Court or a judge of one of the superior Courts of any of her Majesty's colonies. One at least of such commissioners shall be a judge of the Supreme Court. The president is to be paid at the rate of £1,500 and the other two commissioners at the rate of £1000 each per annum. The Attorney-General may remit any case of treason for trial by a magistrate without a jury in the same way as if treason were not excepted from a magistrate's jurisdiction under the Act of 1896. Any case of treason in a competent Court shall be concluded as if the Act had not passed, but such Court may before plea direct the case to be removed to the special

Court. All proceedings and judgments in magistrates' Courts shall be subject to appeal to the Special Court.

Indemnity.—By No. 15 the Governor and the officer commanding her Majesty's forces, and all persons acting under their authority and in good faith in regard to Acts during the existence of martial law, are indemnified in respect of all acts done in the suppression of hostilities and the maintenance of good order and government and the public safety. Sentences passed by martial law or by any Court or person exercising judicial functions under the authority of the general officer commanding, or of any officer of her Majesty's forces purporting to exercise authority in that behalf since the proclamation of October 15th, 1899, are confirmed and approved, and are to be deemed to be sentences passed by duly constituted Courts of the colony. The Governor's certificate that acts have been done under such authority or in good faith, etc., is to be conclusive. Any order made by the Governor after October 23rd, 1899, for suspending the operation of any Act of Parliament is confirmed. The Governor and the Colonial Treasurer and all persons concerned are indemnified in respect of any payments which have been made from the Consolidated Revenue Fund for meeting expenses occasioned by the state of war subsisting, but which have not been authorised by an Act of Supply.

3. SOUTHERN RHODESIA.

Ordinances received—14.

Registration of Contracts.—No. 1 amends the law of registration of mortgages and ante-nuptial contracts by giving twenty-eight days for registration and repealing so much of the Cape Acts applicable as are repugnant to the present Ordinance.

Local Government.—No. 2 amends the Towns Management Ordinance, 1894, and empowers sanitary boards to frame regulations for imposing a tax on the keeping of dogs, for regulating structures, for covering wells, and sanitary purposes. By No. 9 the Municipal Law of 1897 is amended, and it is provided that owners and occupiers may be charged £10 for each attendance of the fire engines and appliances and £5 per hour during the time that water shall be playing upon their buildings.

Census.—No. 3 provides for a census in 1901.

Cattle.—No. 4 amends the law with reference to the branding of stock. The definition of "brand" is the impression of any letter, sign, or character branded upon any horse, cattle, or ostrich, and the impression of any letter, sign, or mark branded or tattooed on the body of any sheep, goat, or ostrich, or made upon the wool of any sheep or goat by pitch, paint, tar, or other substance. A Brand Directory is to be published by authority. Entries in the register of brands are to be settled by agreement between conflicting claimants or by the Registrar. Brands may be assigned, but transfers are only

to have validity when registered. No. 5 is a code in thirty-four sections for suppressing lung sickness in cattle. It contains provisions for inspection, quarantine, slaughtering, and compensation. Inoculated cattle may not be sold in public within less than thirty days after inoculation.

Licensing Dentists.—By No. 8 no person who has not been duly licensed to practise dentistry shall be entitled to recover any fee for dental service. Persons entitled to practise as dentists in Cape Colony or licentiates in dental surgery or dentistry in the United Kingdom or in any British colony or possession, or holding certificates, diplomas, etc., entitling them to practise dentistry in any foreign country and furnishing sufficient evidence of knowledge and skill, or persons who before the Ordinance obtained permission or authority to practise as dentists in Southern Rhodesia, are admissible to practise as dentists and to obtain the licences. If any person licensed or authorised to practise shall after due enquiry, at which he shall have an opportunity of being heard, be found or reported to have been guilty of infamous or disgraceful conduct in any professional or other respects, the Administrator may direct that his licence be cancelled. Any person who shall wilfully pretend to be or shall take or use the title of dentist, or shall practise as a dentist without the requisite licence, shall be liable to a penalty of £100 for each offence, with six months' imprisonment in default.

Supply.—No. 11 deals with a budget of £781,317.

Criminal Law Amendment.—No. 13 is directed to the protection of women and girls and the suppression of brothels. Its fourteen sections differ greatly from the provisions of the Imperial Act of 1885, but it refers to an earlier law of 1897. The age at which consent may be given is fourteen years, and it is a defence to the person charged under the unlawful knowledge section that he was under fifteen years. In a prosecution for living on the earnings of prostitution—the penalty for which is a fine of £100, or imprisonment for six months, increasing on subsequent convictions to £500, twelve months, twenty-five lashes, or any two or more of such punishments—it is sufficient to prove that the male person consorted or lived with, or was habitually in the company of, the prostitute, unless he can satisfy the Court that he was not knowingly living on the earnings of prostitution.

Land Grants.—No. 14 declares the meaning of the term "occupation" with reference to grants of land as follows: The erection of permanent substantial buildings worth £250 upon fifteen hundred morgen or the maintenance thereon for three years of (*a*) twenty head of horned cattle, horses, mules, or asses, or one hundred and fifty sheep, goats, or pigs; or (*b*) enclosure and cultivation for three years of ten acres of land out of the fifteen hundred morgen; or (*c*) enclosure, planting, and maintaining of five hundred fruit or one thousand timber trees, or the performance to the satisfaction of the Administrator of a proportionate part of the requirements of (*a*), (*b*), and (*c*). The form of grant scheduled to the Ordinance certifies that the British South Africa Company has granted the land described in the diagram

subject to quit rent and the reservation to the company of gold, silver, aluminium, copper and their ores, coal, precious stones, mineral oils, and minerals containing mineral oils. With regard to any other minerals, the company may peg off the same by its assigns under the mining law, but the grantee shall be entitled to half of any profit which may accrue to the company. Power to make roads, telegraphs, railways, etc., without compensation is reserved to the company. The company may resume the land for public purposes, which include the establishment of a township, on paying compensation under the Cape Lands Clauses Act, 1882. Persons travelling by vehicle, riding, or travelling with stock or traction engines or otherwise, and persons having waggons for transport purposes along roads declared necessary for public requirements, may outspan, travel, off-saddle, or halt upon the land, except where under cultivation or within two hundred yards of a dwelling house, and take water for such traction engines and depasture and water any animals used or driven by or accompanying them for not exceeding twenty-four hours, excepting in cases of detention for a longer period by accident, stress of weather, swollen rivers, or other unavoidable circumstances, but the grantee may delimit an area or areas not exceeding ten per cent. of the extent of the farm, with reasonable access to water, to be set aside as an outspan.

VI. WEST AFRICA.

[*Contributed by* Albert Gray, Esq.]

1. GAMBIA.

Ordinances passed—8.

With one exception the Ordinances of this year relate to supply or effect small amendments in existing laws.

Bankruptcy.—An attempt is made by No. 2 to solve difficulties arising in bankruptcy as between the United Kingdom and the colony; but, as it would seem, the solution is all in favour of creditors in the United Kingdom. The leading motive is that where the colonial Court is satisfied that a trustee, assignee, or receiver has been appointed in the United Kingdom, the colonial Court is to act in aid of such person. The Court may stay any action brought against the insolvent or his property, but without prejudice to the power of any secured creditor to realise his security.

The provision which seems to press hardly upon colonial creditors is this: where a creditor in the colony or protectorate has issued execution against the goods or land of the insolvent, he is not entitled to retain the benefit of his execution against the trustee or assignee appointed in the

United Kingdom, unless he has completed the execution before the date of the vesting order, or before knowledge that a petition has been presented by or against the insolvent. For the purpose of establishing knowledge the Court is to have regard to the fact that public intimation of such petition has been made by placard or notice in the colony.

All local rates and taxes may be recovered against the insolvent's estate in priority to the claims of the trustee or assignee.

2. GOLD COAST.

Ordinances passed—21.

Patents and Trade Marks.—These subjects are severally dealt with in two Ordinances (Nos. 1 and 2). They are framed on the lines of the United Kingdom Act of 1883.

Customs Tariff.—The principal Tariff Ordinance (1898) is amended by extending exemption to coal (No. 3).

Special Constables.—The Act of 1899 is repealed and re-enacted with amendments (No. 5).

Shipping Casualties.—The provisions of the Merchant Shipping Act as to shipping casualties, wreck, and salvage are adopted for colonial use by Ordinance No. 6.

Public Works.—A loan of £676,000 from the Imperial Treasury is negotiated for various works, the principal of which are the Tashwar and Volta Railways, the Accra Harbour, and for surveys for the Kumasi Railway (No. 7).

Concessions from Natives.—Among the most difficult questions which arise from the first contact of civilisation with barbarism is the validity to be given to concessions of land and mineral rights obtained by knowing whites from ignorant blacks. The matter has been dealt with in various modes in Africa, principally by registration after preliminary enquiries. In the Concessions Ordinance, 1900 (No. 14), the Gold Coast Legislature, in view of the persistent inroads of the gold-seeker, has essayed to subject these concessions to the stringent scrutiny of the Supreme Court; and a detailed summary of the Ordinance may be of some interest to company promoters who put the prospector in motion, or who surrender themselves to his allurements.

A "concession" for the purposes of the Ordinance means "any writing whereby any right, interest, or property in or over land with respect to minerals, precious stones, timber, rubber, or other products of the soil, or the option of acquiring any such right, interest, or property, purports to be either directly or indirectly granted or agreed to be granted by a native." The term "native" includes "all persons of African birth who are entitled by native custom to rights of land in the colony." The latter definition seems to be too restrictive, and it will be interesting to see whether it does

not open the door to concessions from natives who have obtained the rights otherwise than by native custom. The word "includes" is, perhaps, the too common slipshod substitute for "means."

Within six months after the Ordinance comes into force, in the case of concessions previously granted, and within six months after the date of the concession in other cases, notice of the concession must be filed by the concessionaire with the Registrar of the Court of the province within which the land is situate. He may also file such other documents as he relies upon in support of his claim. Notice of the filing of every such *declaration* (? notice) is then given by the Registrar to the Governor. At this point the drafting is not very satisfactory, as the publication of the notice in the *Gazette* is not to be made by the Governor, as would seem proper, but by the Court, and no provision is made for getting the Court seised of the notice.

A concessionaire who makes default in filing the notice in the provincial Court is liable to a penalty of £5 a day for every day during which the default continues. This is a curious provision; we should expect that the penalty would be simply the invalidation of the concession, or a revenue fine to be exacted when he ultimately seeks a certificate of validity.

The enquiry by the Court must not be held before the expiration of three months after the filing of the notice. During this interval any person may enter notice of opposition; and the Governor may direct the Attorney-General to intervene in the enquiry as a party.

The concession is not to be certified as valid (*a*) unless it is made in writing signed by the grantor or an authorised agent; (*b*) unless the Court is satisfied that the proper persons were parties, and that they understood the nature and terms of the concession; (*c*) if it was obtained by fraudulent or other improper means; (*d*) if it was "made without adequate valuable consideration, regard being had to the circumstances existing at the time of the concession"; (*e*) "unless all the terms and conditions upon which such concession was made which ought to have been performed have been reasonably and satisfactorily performed"; (*f*) unless the Court is satisfied that the customary rights of natives are reasonably protected in respect of shifting cultivation, collection of firewood, and hunting and snaring game.

A certificate of validity is not to be given in the case of a concession conferring mining rights for more than an area of five square miles, or in case of rights to cut timber or to collect rubber, for more than an area of twenty square miles. When the concession extends beyond these areas, the certificate must limit it. And a single person must not at the same time hold concessions for more than twenty square miles (mining rights), or forty square miles (other rights). When the Court limits a concession under this enactment, it must declare it to be void as respects the residue. All the costs of the notices, enquiry, survey, etc., fall on the applicant for

the certificate. The certificate of validity is declared to be "good and valid from the date of such certificate against any person claiming adversely thereto, and in the event of the land therein referred to being declared to be the property of any person other than the one mentioned in such certificate of validity, the Court shall on the application of the holder of the said certificate substitute the name of such owner." The construction of this enactment must, we think, give rise to some perplexity. It seems to mean that when the property forming the subject of a certificate is transferred, the name of the transferee is to be substituted in the certificate. But why is there an express reference to transfer? and why is the substitution required, inasmuch as the certificate will form part of the transferee's title? and why should the substitution be made only on the application of the transferee, whose interest will have ceased with the transfer?

Even with a certificate in his pocket the purchaser cannot commence operations: he requires a licence from the Governor (fee £30) to prospect for minerals. This licence may be obtained before the concession is investigated, but if the concession is pronounced invalid, the licence becomes void. A person who prospects for minerals without a licence or concession is liable to a penalty not exceeding £50. There is no definition of "prospecting," but perhaps the meaning of the term is common knowledge at the Gold Coast.

A duty of one shilling in every twenty is payable to the Crown on all profits made in the exercise of rights under concessions. This must be paid on or before June 30th, in respect of profits for the year ending the preceding December 31st, and in all cases before any appropriation or distribution of profits is made. The collection of this duty is in the hands of the Treasurer, and he has various powers necessary for duly assessing the profits.

It must not be expected that even in a West African mining Ordinance we can escape fetish in some form or other. Our *résumé* of this law may therefore be concluded with this section: "If any chief or other person shall declare or represent any land affected by any concession in respect of which a certificate of validity has been issued by the Court, or as to which proceedings are pending before such Court, to be fetish land, he shall be guilty of an offence and shall be liable to a penalty not exceeding £50."

Exportation of Arms.—A short Ordinance (No. 17) enables the Governor in Council by proclamation to prohibit the exportation of arms and ammunition, military or naval stores, from the colony to any specified country or place, when he judges such prohibition to be expedient in order to prevent such things being used against our own military or naval forces or against any allies.

3. LAGOS.

Ordinances passed—20.

Loans.—Provision is made by No. 2 for borrowing from the Imperial Treasury the sum of £792,500 subject to the provisions of the Colonial Loans Act, 1899. Further provision is made by No. 4 for borrowing the sum of £126,200 by the issue of inscribed stock.

Oaths.—Following the Imperial Act, provision is made by No. 7 for the use of solemn affirmations where a person objects to taking an oath, on the ground that he has no religious belief, or that the taking of an oath is contrary to his religious belief. Liberty is also reserved to our dusky fellow-subjects to swear with uplifted hand in the form and manner used in Scotland.

Law Officers.—Following the practice of other colonies, Lagos now changes the title of its law officer from "Queen's Advocate" to "Attorney-General."

Criminal Law.—Slanderous words imputing unchastity to a woman no longer require special damage to render them actionable (No. 12).

Proceedings for the trial of a foreigner for an offence alleged to have been committed within one marine league of his coast are not to be commenced except with the leave of the Governor (No. 20).

The same Ordinance makes a very important change in the procedure for the punishment of perjury. A Court, "if it appears to it that a person has been guilty of perjury in any proceeding before it," may either (*a*) commit him for trial on a charge of perjury; (*b*) commit him to prison, as for a contempt of Court, for a term not exceeding six months, with or without hard labour; or (*c*) fine him a sum not exceeding £50. These summary powers are subject to certain limitations. When the Court is held by a district commissioner, he must within three days send a copy of the proceedings to the Chief Justice, who may vary or set aside the order. A district commissioner also may not impose imprisonment for more than three months or a fine of more than £25.

Another important addition to the criminal procedure of the colony is the introduction (also by No. 20) of the hotly contested "inquisition" provision, taken from the Crimes Act (Ireland) and Sir James Stephen's Code, whereby enquiry may be made into the circumstances of an offence, whether any person is charged or not.

Exportation of Arms.—Power is given to the Governor to prohibit the exportation of arms, ammunition, or any military or naval stores (No. 16, repealing No. 13).

Sale of Drugs and Poisons.—As no enactments are repealed, it would seem that the Sale of Drugs and Poisons Ordinance, 1900 (No. 14), is the first attempt made in the colony to restrict to competent persons the

preparation of drugs and to regulate the sale of poisons. Persons are not allowed to act as druggists without a licence from the Governor, which can only be obtained by one who is a duly qualified chemist and druggist in the United Kingdom or has obtained a certificate from the Board of Examiners constituted by the Act. The provisions as to the sale of poisons are adapted from the Pharmacy Acts.

Game Preservation.—Under the title of "The Wild Animals, Birds, and Fish Preservation Ordinance, 1900," the colony takes its part in the movement for the preservation of African game which was inaugurated by the International Conference of 1898.

The scheme adopted is to leave the whole matter, subject to slight guidance from the Ordinance, to be dealt with by executive order. The Governor may prohibit the killing of vultures, secretary birds, owls, giraffes, gorillas, mountain zebras, wild asses, elands, etc.; he may prohibit the killing of the young or the females (when accompanied by their young) of another class—elephant, rhinoceros, hippopotamus, buffalo, and certain species of antelope; he may prescribe the number of animals that may be killed in particular districts during specified periods; he may prohibit the taking of particular birds' eggs and the capture of any specified fish; he may prescribe close seasons and appoint reserves; he may establish export duties on hides and skins of giraffes, antelopes, etc., on horns and tusks, and on the skins and plumage of birds; he may also regulate the destruction of beasts of prey such as the lion, leopard, hyena, otter, baboon, crocodile, python, and poisonous snakes. Notwithstanding the existence of a protective order, the Governor may sanction the killing by specified persons of protected animals which may be seriously injuring crops, cattle, lands, or other property.

Revision of Statutes.—An Ordinance of the new model form provides for a revision and new edition of the colonial Ordinances, to be carried through by Mr. E. A. Speed, the Attorney-General.

4. SIERRA LEONE.

Ordinances passed—27.

Pearl Fishery.—By No. 2 an exclusive right of pearl fishing is created in favour of the Crown and its licensees over such waters as may be specified in any grant made by the Governor in Council. In these "protected waters" no person may search for or gather pearls (? pearl oysters) or use any diving apparatus without a licence from the Crown licensee.

Criminal Law.—Where a young person (under eighteen) is charged before a summary jurisdiction Court with an indictable offence other than homicide (Ordinance No. 3), the Court may deal with the case summarily and may award imprisonment not exceeding three months or a fine not exceeding £10 if the offender is a male; whipping with a tamarind rod may be substituted, not exceeding twelve strokes.

Another Ordinance deals with insults provocative of a breach of the peace (No. 4). A fine of £5 is incurred by any person who in any public place insults another person in such a manner as to be likely to provoke him to commit a breach of the peace, or who "makes use of any threatening, abusive, insulting, or obscene language, gesture, or behaviour" with like intent, or sings insulting or offensive songs "to the annoyance of any person in any place," or who sends or delivers to any person any writing of a similar character, or "calls any person by a name or description other than his own with intent to insult or annoy," or with like intent publishes any false notice of any birth, marriage, or death.

Weights and Measures.—No less than three Ordinances on this subject were passed in 1900. By No. 5, passed on January 29th, 1900, the Imperial weights and measures were declared to be the standard weights and measures for the colony, as "from the 8th day of April, 1899"—a curious peice of retrospective legislation. By No. 9 this general enactment is repealed, and a detailed Ordinance founded on the Imperial Act is substituted. By No. 25 an error in the schedule to No. 9 is corrected.

House Tax.—A tax on houses for local improvements is instituted by Ordinance No. 11—viz., one shilling in the pound of annual value, with a minimum of five shillings. It is thus, in fact, a fixed tax, but, being for local purposes, it is described in the Ordinance as "a rate which shall be called the 'house tax.'" The colony is divided into districts, and the fund collected in each district, after meeting expenses of collection, is to be devoted to the benefit of the district, under the direction of an Advisory Board. They are to advise the Governor in Council "as to the nature of the local requirements within their district, such as public works and other improvements, which are most urgently needed." The value of houses is to be fixed by assessors, with appeal to commissioners appointed by and under the Ordinance. The tax is payable by the occupier, but falls on the owner if the occupier cannot be found, if the annual value is less than £5, or if the rents are collected for shorter periods than quarterly. Churches, hospitals, and colleges are exempt, as also are public buildings, unless let to a person who, if he were owner, would be liable.

Dogs.—Every person keeping a dog within the limits of Freetown must take out a licence for the year, and pay a duty of four shillings. Every licensed dog must wear a metal badge, which is issued with the licence. Provisions are added for the destruction of dangerous and diseased dogs throughout the colony.

Tariff.—The Tariff Law of 1899 which we noticed last year is repealed, and an amending Ordinance (No. 26) is substituted, which makes additions to the scheduled list of goods exempted from import duty. The new exemptions include mathemetical, scientific, and surgical instruments, newspapers, and memorial tablets and tombstones.

Prisons.—The law relating to prisons is amended and consolidated by

No. 27. The only provisions calling for remark are the powers for the working of prisoners outside the prisons at any place in the colony, the limitation of whipping sentences to twenty-four strokes, with an instrument to be specified by the Governor, and a power to remove prisoners to a prison in Great Britain, subject to the approval of a Secretary of State, when the state of his health requires that he shall no longer be kept in the colony. The Ordinance appears to follow the model form of such laws.

5. SOUTHERN NIGERIA.

Proclamations—28.

The year 1900 was the first of the legislative career of this Protectorate. All powers are centred, under the Southern Nigeria Order in Council, 1899, in the High Commissioner, who legislates by Proclamation without the advice of any council.

Dealings with Natives.—In all the African colonies and protectorates it is gratifying to see that endeavours are on foot to save the innocent native from the unscrupulous white. Here we have two stringent enactments which will probably be modified in course of time by provisoes and saving clauses. The first is that no person other than a native can acquire any interest in land from any native without the written consent of the Commissioner. The second (No. 26) is in these terms: "No Court of law in the territories of Southern Nigeria shall enforce against a native any obligation incurred by him towards any person not being a native of Southern Nigeria, in respect of a commercial transaction, so far as it may be based upon credit."

Prisoners.—Power is given to interchange prisoners as between Northern and Southern Nigeria.

Interpretation.—No. 4 is an enactment providing, in the first place, for the printing and authentication of the Proclamations, and secondly for their interpretation; in this second part are included some of the provisions of the Interpretation Act, 1889.

Courts of Judicature.—A Supreme Court is established, with a Chief Justice and as many puisne justices as the Commissioner, with the approval of the Secretary of State, may appoint (No. 6). The law to be administered is that of England, as in force on January 1st, 1900. A schedule of Rules of Procedure is appended.

A criminal procedure law (No. 7) follows, in which a number of amendments of English law appear. For instance, on the appearance of the accused on summons or warrant, if he admits the charge, he can be thereupon summarily convicted of the offence. The accused, when subjected to formal trial, is tried upon an "information" which is expressed to be equivalent to an indictment found by a grand jury, so that this palladium of English justice is dispensed with. The substitution of the

term "information" for "indictment" does not strike one as altogether happy. These informations are not to be held insufficient by reason of certain omissions; but it would have been well to give a few samples in a schedule of forms in order to get rid of the verbiage of indictments.

A person may be tried for any offence before the Court with assessors, so that the petit jury and the grand jury disappear together.

The judge is authorised to "examine the accused person" at any stage of his trial, and also to put questions to him after the close of the case for the prosecution or for the defence.

It seems curious that jurors on coroner's inquests are retained, while their services are dispensed with at trials.

Next follows a Proclamation for the appointment of commissioners of districts, each of whom possesses the powers of the Supreme Court, though there is an appeal from the commissioner to the Court.

Besides the Supreme Court and its commissioners, special Courts for natives are established (No. 9). First there are "Minor Courts" presided over by a native authority; but these are subject to the control and supervision of the "Native Councils," each of which is presided over by a European officer. Minor Courts have jurisdiction in debt, etc., up to £25, in all questions relating to land under native tenure, and in succession cases where the whole property of the deceased did not exceed £50. Native Councils have jurisdiction in debt, etc., up to £200, and in succession cases where the whole property does not exceed £200. Native Courts have no jurisdiction in Crown cases, and those Courts are to be free from the intrusion alike of counsel and attorney, except by special leave of the Commissioner. The Native Courts have considerable criminal jurisdiction; and they may try the offences of fire-raising, slander, and "putting any person in fetish."

Spirituous Liquors.—A Proclamation (No. 12) in furtherance of the Brussels Act provides that spirituous liquors are not to be sold or bartered or imported within the inland regions—viz., those formerly within the jurisdiction of the Royal Niger Company. Another Proclamation (No. 13) prohibits the payment of wages in spirituous liquor. Another (No. 24) provides for the transit of wines and other liquors to Northern Nigeria.

Trade Marks and Patents.—Registration of trade marks and grants of patents in the protectorate are provided for in two Proclamations (Nos. 25 and 27) following the now usual form of colonial Ordinances.

Tariff.—No less than three attempts were made in the year to settle the tariff on a satisfactory footing. The last, and at present operative law, is No. 28. In the main the law follows African precedents. Certain goods and articles are subjected to specified duties; all others pay five per cent. *ad valorem*.

The interesting feature of the law consists of the provisions creating a customs union as between this protectorate, Northern Nigeria, and the

colony of Lagos. Goods which have paid duty on importation to Northern Nigeria or Lagos are not liable to further duty on importation into Southern Nigeria, unless the duty so paid is less than that to which they would be liable under this Proclamation, if imported direct; in such case only the difference is charged.

The table of exemptions is similar to those of other West African tariff laws; but it may be noticed that all books are exempt—not only Bibles or educational books, as in some other cases. On the other hand, none of the exempted articles are free of duty if imported for trade or resale.

VII. SOUTH ATLANTIC.

[*Contributed by* EDWARD MANSON, ESQ.]

1. FALKLAND ISLANDS.

Ordinances passed—6.

Customs (Nos. 1, 6).—Import duties of twelve shillings per gallon are imposed on spirits and strong waters, sixpence per gallon on malt liquors, cider, and other beverages, and fivepence per pound on cigars. Eau de cologne, ginger-beer, and mineral waters are exempted. Export duties are imposed on wool, sheep-skins, and living sheep.

Supply.—Nos. 2 and 4 are Supply Ordinances.

Interpretation and General Law (No. 3).—This Ordinance deals with the promulgation and construction of Ordinances and with a number of matters of law and procedure—who may make arrests, fines for violating an order of the Governor, appeals, summary jurisdiction, the meaning of particular words, etc. Want of form is not to invalidate any order, judgment, or warrant. The most important clause runs as follows:—

> Subject to all local Ordinances and Orders in Council in force for the time being, so much of the law of England, for the time being, as is applicable to local circumstances, is and shall be in force in this colony, so far as it is suitable and appropriate, and subject to such qualifications as local circumstances render necessary.

Importation of Destitute Aliens (No. 5).—This is another example of the policy of self-protection against undesirable immigrants now being so widely adopted by our colonies. Whenever any person arrives in the colony under an engagement to serve any person, firm, company, or association in any capacity, and within six months becomes chargeable to the colony, the persons with whom the engagement was made are to be liable to repay to the Government all the costs and charges incurred on the employé's behalf, including hospital charges and his removal from the colony. The

same is to apply to any seaman discharged in the colony without the sanction of the Colonial Secretary and without reasonable provision being made for his subsistence. The master of any ship, British or foreign, bringing into the colony any destitute person is also to be liable to repay to the Government of the colony all costs and charges incurred by it unless the master can satisfy a magistrate that he believed the person in question to be possessed of means of subsistence. A master is not to be liable for stowaways provided they are handed over to the police on arrival.

Naturalisation.—An alien who has resided in the colony or been in the service of the Crown for three years and intends to reside in the colony or to serve under the Crown may, on tendering evidence satisfactory to the Governor, taking an oath of allegiance, and payment of a fee of £3, obtain a certificate of naturalisation.

Aliens.—Aliens may acquire, hold, and dispose of real and personal property of every description as if natural-born British subjects, but are not qualified for any office or franchise.

VIII. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.

[*Contributed by* J. A. Simon, Esq.]

Acts passed—Public, 48; Local and Private, 81.

Canadian Volunteers in South Africa.—No. 6 recites in its preamble that "the Government of Canada deemed it expedient to anticipate the action of Parliament by authorising the appropriation of certain sums of money for the purpose of equipping and forwarding Canadian volunteers to the seat of war," and s. 1 ratifies the expenditure of $850,000 and exonerates the executive "from all liability by reason of having used or authorised the use of the above-mentioned sums of money, or any portion thereof, without due legal authority." S. 2 authorises a further expenditure of $1,150,000.

The influence of the war upon Canadian legislation may also be seen in No. 5, s. 6 (authorising bonuses to certain civil servants who have volunteered), in No. 20, s. 4 (providing for the reckoning of time spent on active service as though it were spent in residence on a homestead for the purpose of the Dominion Lands Act), and in s. 9 of the Elections Act (*infra*).

Subsidies.—No. 8 authorises the granting of subsidies (which may range between $3,200 and $6,400 per mile according to cost) in aid of the construction of forty pieces of railway.

No. 9 authorises a subsidy for not more than ten years of not more than £15,000 per annum for a monthly service of steamships between British Columbia and China or Japan.

The Dominion Elections Act, 1900.—No. 12 consolidates and amends the law relating to elections of members of the Canadian House of Commons. S. 69 preserves the voting qualification of any person who has been absent from his electoral district by reason of military service in or outside Canada, or by reason of his "acting as a war correspondent in connection with any war in which a Canadian contingent is serving." SS. 99–107 contain a series of stringent provisions intended to secure good order at elections. Thus, returning officers and their deputies are invested with all the powers of a justice of the peace, may arrest and imprison till the close of the poll persons disturbing the election, and may require any person carrying weapons of offence within half a mile of the place of nomination or polling station to deliver them up. Strangers are not to enter the polling district on polling day "armed with offensive weapons of any kind, such as firearms, swords, staves, bludgeons, or the like." Flags are not to be furnished or carried, and ribbons, labels, or other favours, used as a party badge, are not to be provided or worn in an electoral district on the day of election, *or within eight days before it.* Finally, by s. 107 "no spirituous or fermented liquors or strong drinks shall be sold or given at any hotel, tavern, shop, or other place within the limits of any polling division during the whole of the polling day at an election."

The Conciliation Act, 1900.—No. 24 is "an Act to aid in the prevention and settlement of trade disputes." S. 3 provides that conciliation boards of masters and men may be registered. S. 4 confers on the Minister to whom the carrying out of the Act may be assigned powers of enquiring into the causes of any industrial dispute, and of promoting an amicable settlement by the offer of good offices. Unlike the New Zealand Act, there is no provision for *compulsory* arbitration; but on the application of either party the Minister may appoint "conciliators"; on the application of both, "arbitrators." Provision is made for filing memoranda of settlement, and s. 10 constitutes a "Department of Labour," which is to collect and disseminate statistical information as to conditions of labour and to issue a monthly *Labour Gazette.*

Copyright.—No. 25 amends the Copyright Act by providing that if the owner of copyright subsisting in any part of the British dominions outside Canada grants a licence to reprint in Canada an edition for sale in Canada only, the Minister of Agriculture (!) may prohibit the importation into Canada of any copies of the book printed elsewhere.

Chinese Immigration.—No. 32 aims at restricting Chinese immigration. By s. 6 every person of Chinese origin, irrespective of allegiance (except merchants, students, diplomatists, etc.), shall on entering Canada pay a tax of one hundred dollars. SS. 10 and 15 throw upon conductors of railway

trains and masters of vessels a personal liability for the payment of this poll-tax by the Chinese immigrants they carry.

Live Stock Records.—No. 33 provides for the incorporation of live stock record associations, with the object of keeping a register of pure-bred live stock of any distinct breed.

Merchant Shipping.—No. 35 repeals the restrictions as to deck-loads laid down in No. 77, s. 7, of the Revised Statutes, so far as regards steamships sailing from Canada between March 16th and October 12th to any port or place out of Canada.

Weights and Measures.—No. 37 amends the Canadian law relating to weights and measures as regards the packing of apples and other small matters.

The Manitoba Grain Act, 1900.—No. 39 is an enactment of fifty-seven clauses regulating the grain trade of Manitoba.

Criminal Code Amendment.—No. 46 amends the Criminal Code of 1892 by substituting new sections for old in a large number of cases.

2. BRITISH COLUMBIA.[1]

[*Contributed by* WALTER PEACOCK, ESQ.]

Acts passed—56.

Loan Societies.—The Extra-Provincial Investment and Loan Societies Act, 1900 (No. 1), provides for the licensing within the province of extra-provincial societies incorporated for the purposes of raising moneys by periodical subscriptions and loaning the same to members of the society. A licence is obtainable on presentation of petition to the Registrar of Joint Stock Companies, the filing of certain documents, and on payment of a fee of two hundred and fifty dollars. A licensed society is empowered to acquire and hold real estate not exceeding in value three thousand dollars in any one place exclusive of improvements, and to hold any real estate *bonâ fide* mortgaged to it to secure payment of the shares subscribed for by the members, with the usual remedies of a mortgagee. Subscriptions may be recovered by action in the usual way. Other clauses deal with borrowing powers, the annual statement and return to be filed in the office of the Provincial Secretary, and the deposit with the Minister of Finance. The provisions of Acts in force in the province relating to the winding-up of companies shall apply to licensed societies.

Canadian Contingent Exemption.—The Canadian Contingent Exemption Act, 1900 (No. 3), relieves members of the Canadian contingent serving in South Africa from the operation of certain provisions of the Placer Mining Act, etc., by extending the duration of free miners' certificates held by them and renewing lapsed mineral claims.

[1] The Session commenced on July 19th, 1900, and ended on August 31st. Of the Acts passed, forty-four are classed as public Acts.

Companies.—The Companies Act, 1897, Amendment Act, 1900 (No. 5), makes slight amendments in the borrowing powers of companies, and the powers of non-personal liability mining companies. Certain land companies are authorised to pay dividends out of the net proceeds of the sales of lands.

Evidence.—The Evidence Act Amendment Act, 1900 (No. 9), amends clauses in the principal Act dealing with the privilege of witnesses where answer tends to criminate. Parties to civil causes and their wives are competent as witnesses, but plaintiffs in breach of promise cases must be corroborated by some other material evidence.

Immigration.—The British Columbia Immigration Act, 1900 (No. 11), regulates immigration into British Columbia. An educational test is provided. An unauthorised immigrant is liable to a penalty of five hundred dollars, recoverable by distress in default of payment, and in the event of distress proving inadequate, a term of imprisonment not exceeding twelve months. An unauthorised immigrant cannot acquire or hold land, and is not entitled to the privileges of a free miner, nor may he exercise the franchise.

Judgments.—The Judgments Act, 1899, Amendment Act, 1900 (No. 12), amends the principal Act as regards the method of registering judgments.

Jurors.—The Jurors Act Amendment Act, 1900 (No. 13), extends the application of the Jurors Act, No. 107 of Revised Statutes.

Labour.—The Labour Regulation Act, 1900 (No. 14), provides a simple educational test for workmen, and prohibits the employment of those that fail.

Land Registration.—The Land Registry Act Amendment Act, 1900 (No. 15), provides for the identification of judgment debtors, the filing of duplicate plans, one to be kept for the use of the public making searches and one for reference in the Land Registry Office. Land sold under the provisions of the Judgments Act, 1899, may upon application and production of the conveyance to the purchaser be registered, and outstanding certificates of title shall be deemed to be cancelled.

Liquor Licences.—The Liquor Licence Act, 1900 (No. 18), provides for the formation of licence districts without the limits of any municipality and of a board of three honorary Licence Commissioners meeting twice a year and holding office for one year. All provincial constables are to be licence inspectors, and a Chief Licence Inspector is to be appointed for each district. Licences may be either hotel or wholesale licences. Liquor licences signed by the Chief Inspector, and granted for six months or a year, shall be licences only to the person named therein and for the premises therein mentioned. Each applicant must forward to the Chief Licence Inspector a petition for the granting of a licence signed by at least two-thirds of the householders of the locality, his own affidavit stating that he is twenty-one and has been a resident in the province for a year, and the affidavit of his neighbours as to character. The Inspector must

report in writing for the information of the Commissioners, who must exercise their discretion on each application, which will be heard publicly and determined in a summary manner. Further provisions deal with the transfer and cancellation by the Commissioners of Licences and the penalties for the sale of liquor without licence, ranging from fifty to one thousand dollars on a third offence, or two years' imprisonment in default.

Mortgagees.—The Mortgagees' Legal Costs Act, 1900 (No. 22), entitles a solicitor to receive fees for investigating the title to property mortgaged to himself, and they will be recoverable from the mortgagor. Solicitors may charge also for subsequent work in connection with such mortgages, whether made before or after the commencement of the Act.

Municipal Clauses.—The Municipal Clauses Act Amendment Act, 1900 (No. 23), amending No. 144 Revised Statutes, prohibits alterations in buildings occupied for dwelling purposes whereby the sanitary condition may be prejudicially affected, and authorises the pulling down of buildings where insanitary alterations have been carried out.

Official Administrator.—The Official Administrator's Act Amendment Act, 1900 (No. 27), re-enacts sections of No. 146 Revised Statutes dealing with the appointment of the Official Administrator and applications by him for order to administer the estate of persons dying intestate or without having appointed executors.

Queen's Counsel.—The Queen's Counsel Act, 1899, Amendment Act, 1900 (No. 31), further regulates the number of Queen's Counsel that may be appointed in each year and settles precedence among members of the Provincial Bar.

Shop Hours.—The Shops Regulation Act, 1900 (No. 34), authorises municipal councils by by-law to require the closing of shops at an hour not earlier than six o'clock in the afternoon and on half-holidays not earlier than twelve. The council may pass the by-law on the application of not less than three-fourths of the occupiers of the class of shops to which the application relates. The by-law may be repealed when more than half of the occupiers of shops are opposed to its continuance. The Act also regulates the hours of labour in shops of young persons—that is to say, boys and girls under sixteen years; the hours must not exceed sixty-six and a half in a week including meal-times. Suitable seats are to be provided for female employees.

Succession Duty.—The Succession Duty Act Amendment Act, 1900 (No. 35), provides for the recovery of succession duty by action in the Supreme Court, which also has jurisdiction to determine what property is liable to duty, the amount thereof and the time when the same is payable. Subject to the discretion of the Court as to costs, an action may be brought for any of the purposes of the Act notwithstanding the time for payment of the duty has not arrived. "Where any property which has, previous to the death of a person whose estate is subject to duty, been

conveyed or transferred to some other person is declared liable to duty, the Court may declare the duty to be a lien on the property." The procedure is regulated, and clauses dealing with the amount of duty in certain cases are re-enacted. In determining the aggregate value of the estate the value of property outside the province is to be included.

Coal Tax.—The Coal Tax Act, 1900 (No. 37). Every owner of a coal-mine shall pay a tax of five cents per ton on all coal delivered from the mine after the coming into force of the Act. Likewise every owner of coke-ovens shall pay a tax of nine cents per ton on coke, provided that no tax has been paid upon the coal from which the coke has been produced. These taxes are in addition to all royalty imposed by any other Act, but in substitution for all taxes upon the land from which the said coal is mined. Owners are to make monthly returns of coal-mines or coke-ovens under oath, and at the same time pay the amount of tax upon the coal or coke shown in the return. Penalties for false returns are imposed.

Assessment.—The Assessment Act Amendment Act, 1900 (No. 30), re-enacts s. 6 of No. 179 Revised Statutes dealing with rates of taxation and fixing the scale of a graduated income tax. SS. 10 and 14 relating to mineral taxation and the returns made by mineowners are also re-enacted.

Trustees' Liability.—The Trustees' Liability Act, 1900 (No. 41), provides for the relief from personal liability by the Supreme Court of a trustee who has committed a breach of trust but has acted honestly and reasonably.

Voting Machines.—No. 43 permits the use of voting machines, which may be adopted for use at elections by by-law passed by a two-thirds majority of the council of any municipality. The requirements of the machine are stated: it must provide facilities for secret voting, must prevent the voter from voting for more candidates than he is entitled to, must automatically adjust itself after a voter has voted, so as to be ready for the next voter, without any interference on the part of any person whatsoever. Directions also are given as to the method of voting.

Water Clauses Consolidation.—No. 44 amends the Water Clauses Consolidation Act, 1897, with regard to the acquisition of water for certain purposes by municipal corporations.

3. MANITOBA.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Acts passed—62.

Factories (No. 13).—The Manitoba Factories Act regulates the employment of labour in factories. By the Act no girls under the age of eighteen, or boys under the age of sixteen, may be employed in any factory which is deemed by the Lieutenant-Governor in Council to be dangerous or

[1] The Session 63 & 64 Vict. began on March 29th, 1900, and ended July 5th. Of the Acts passed, twenty-two would in the United Kingdom be treated as local or personal.

unwholesome. Young girls or women may not be employed for more than eight hours a day, nor for more than forty-eight hours in any week, and they are to have an hour in the middle of the day for meals. They are not permitted to clean any machinery whilst the same is in motion. Inspectors having very full powers are appointed for carrying out the Act.

Game (No. 14).—The Game Protection Act fixes the close time for animals and birds, and in certain cases limits the number that may be killed by one person during the year. The eggs of birds protected by the Act are also protected, and non-residents in the province may not sport without a licence. Game guardians are appointed by the Lieutenant-Governor in Council to enforce the Act.

Inn-keepers (No. 16).—The Hotel-keepers Act gives hotel, boarding and lodging house keepers a lien on the goods of their guests for board or lodging, and a right to detain and sell such goods. Their liability for the property of their guest is limited to two hundred dollars, unless the loss or damage to the goods is caused by the fault or neglect of the keeper or his servant, or when the goods have been deposited with the keeper for safe custody. To obtain the benefit of the Act a copy must be posted in the office and in all public rooms and bedrooms.

Liquor Traffic (No. 22).—The Liquor Act consists of one hundred and twenty-one sections and regulates the licensing of persons who may sell spirits. No person may sell liquor without a druggist's license, or have liquor on his premises, other than his private dwelling-house, without such licence. No person other than the father, guardian, or physician can sell or give liquor to any minor, and then only for medicinal purposes. No liquor may be consumed or kept at a club.

Married Women (No. 27).—The Married Women's Property Act amends and consolidates the law on this subject. By this Act a married woman is enabled to hold property as if a *femme sole*, and can devise it by will. She may sue or be sued in contract or in tort, and her husband need not be joined as a party to the proceedings. A married woman is liable for her ante-nuptial debts, and for the maintenance of her children.

Personal Property (No. 31).—Every sale of goods not accompanied by an immediate delivery, followed by an actual and continued change of possession, is to be in writing, and must be accompanied by an affidavit of a witness to the due execution thereof, and by an affidavit by the bargainee that the sale is *bonâ fide* and for good or valuable consideration, and not as a fraud on creditors. An agreement or promise for the sale of goods is to be treated as a sale within the meaning of this Act. Mortgages not accompanied by delivery and an actual and continued change of possession must be registered within fifteen days.

Appropriation.—Nos. 52 and 54 make an appropriation out of the Consolidated Revenue Fund for the different departments of the public service.

Taxation.—No. 55 provides for increased revenue by the taxation

of corporations. The Act is similar though more detained to No. 6 of the Statutes of Prince Edward's Island for 1900.

Railways.—No. 57 imposes a tax on the gross earnings of all railways in the province. Before 1903 it is to be two per cent., and after that date three per cent.

4. NEWFOUNDLAND.

[*Contributed by* L. S. Bristowe, Esq.]

Acts passed—11.

Session I.

French Treaties.—No. 1 continues the Newfoundland French Treaties Act to December 31st, 1900.

Session II.

Crown Grants.—No. 2 amends No. 61 of the Consolidated Statutes (2nd Series) by providing that the grantee of a Crown grant is not to be compelled to expend money during proceedings respecting title, and that the Governor in Council may issue a new grant after judgment in proceedings respecting title.

Companies.—No. 3 amends the Companies Act, 1899, by enabling companies previously incorporated to be registered under the Act, and by providing for the registration without the use of the word "limited" of associations for the promotion of commerce, art, science, religion, or charity, and not for gain.

Judicature.—No. 5 makes various small amendments in the Judicature Act, 1889.

Summary Jurisdiction.—No. 6 amends the law of summary jurisdiction by providing that a stipendiary magistrate sitting alone or with one or more justices of the peace shall be a Court of summary jurisdiction within the Imperial Summary Jurisdiction Act, 1879, and enabling the Court, with the consent of the Minister of Justice and the prisoner, to deal summarily with certain offences, with power to imprison for a year or inflict a fine up to two hundred dollars.

Aliens.—No. 7 enables aliens to hold lands and property in the same manner as a natural-born British subject.

Beavers and Foxes.—No. 8 provides a close time for beavers and foxes.

Supply.—No. 10 contains a money grant for defraying public expenses of the colony.

Minor Amendments.—No. 1 amends 62 & 63 Vict., No. 6, entitled "An Act to authorise certain payments under the road service of the colony by cash notes and for other purposes." No. 4 amends 61 Vict., No. 6, entitled "An Act to provide for the maintenance and operation of the Newfoundland Railway and for other purposes." No. 9 amends the Revenue Act, 1898.

5. NORTH-WEST TERRITORIES.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Ordinances (for 1901) passed—43.

Appropriation.—No. 1 appropriates $589,120 to defray the expenses and charges of the public service for the year 1901.

Interpretation.—No. 2 amends the Interpretation Ordinance by inserting after "Arbour Day" "the 24th day of May, or when such day falls on a Sunday, the 25th day of May, to be known as 'Victoria Day.'"

Public Works.—No. 4 creates a Department of Public Works which is to have the management of Government buildings, public highways, and ferries. Lands required for the public service can be taken after proper compensation.

Boiler Explosions (No. 7).—Inspectors are to be appointed by the Lieutenant-Governor in Council to inspect once a year at least every boiler other than railway and steamboat boilers, or boilers used for heating water for domestic purposes. No person is permitted to operate on a steam boiler without holding a certificate of competency granted in accordance with the provisions of this Ordinance.

Insurance (No. 9).—The Hail Insurance Ordinance empowers the Territorial Treasurer or other appointed officer of the Executive Council to insure crops from damage by hail at the rate of four dollars per acre.

This Ordinance is in direct conflict with No. 20 of the Ordinances of 1900, and that Ordinance is therefore repealed, and insurance companies are prohibited from effecting insurance against damage by hail.

Intestates' Estates (No. 13).—This Ordinance amends the law relating to the devolution of the property of intestates. It gives to the widow the whole estate of the husband if he dies without issue. In the case of the death of a person without leaving a wife, child, or father, the mother takes the whole estate. In the distribution of personal property of a woman her illegitimate children are entitled to the same rights as if they were legitimate, and on the death of an illegitimate child without issue the mother is entitled to the personal property.

Companies (No. 20).—This Ordinance repeals all the previous Ordinances relating to company law and provides a code for the constitution, incorporation, registration, and general management of all associations or partnerships consisting of more than twenty persons which carry on business within the territories.

Villages (No. 25).—This Ordinance repeals No. 25 of 1900, but re-enacts its provisions in a more detailed and workable form.

Districts.—No. 27 provides for the constitution of any portions of the territories not contained within the limits of a municipality or organised

[1] The Session commenced on May 2nd, and closed on June 20th, 1901. Of the Ordinances passed in this Session, ten would be treated in the United Kingdom as private Acts.

village into a district. The Ordinance provides for its administration and management by an overseer to be elected annually by the ratepayers.

Education.—No. 29 consolidates and amends the law relating to the management and attendance at schools.

6. PROVINCE OF ONTARIO.

[*Contributed by* EDWARD MANSON, ESQ.]

Acts passed—142, of which 94 were Local or Private.

Election.—No. 4 amends in certain details, such as counting of votes by returning officers, the preservation of documents, etc., the Ontario Elections Act. The most important provision is that a witness respecting an election is not to be excused answering on the ground of privilege or that the answer may criminate him, but if he answers truly, he is to be entitled to a certificate of indemnity.

Spruce and Pulp Wood on Crown Domains (No. 11).—By this Act every licence to cut spruce or other soft wood not being pine suitable for manufacturing pulp or paper on the ungranted lands of the Crown is made subject to the condition that all such timber should be manufactured into pulp, paper, or wooden-ware in Canada.

Mines (No. 13).—Mining royalties are by this Act abolished, and in lieu thereof a licence fee is imposed on the gross quantity of the ores or minerals raised. A statement on oath of the output is to be filed every year by the miners with the Director of the Bureau of Mines. If the ores are treated in Canada, a proportion of the fee may be remitted. The Lieutenant-Governor may require lands valuable for iron ore to be worked. Plans of mines are to be filed at the Bureau of Mines.

Regulations are also made for ventilation of mines, magazines for blasting, explosives, refuges in tram roads, fencing of old shafts, safety from water, skidways, brakes, bills, etc.

Labour (No. 14).—This Act establishes a Bureau of Labour attached to the Department of the Commissioner of Public Works. The object of the Bureau is to collect, systematise, and publish information and statistics as to employment, wages, and hours of labour throughout the province, and other subjects of interest to working-men, their commercial, industrial, and sanitary conditions, and the permanent prosperity of the industries of the province.

Companies (No. 23).—This Act amends in certain particulars the Ontario Companies Act. The most important amendments are those sanctioning the purchase by the company of its preference stock, requiring the use, where the company is one formed for gain, of "Limited" outside company's places of business and in their advertisements, bills, invoices, etc., and fixing a scale of fees payable on filing certain returns.

Extra Provincial Corporations (No. 24).—These—that is to say, corporations created otherwise than by or under the authority of an Act of

the Legislature of Ontario—now require, with certain exceptions, a licence to entitle them to carry on business within the province, either themselves or by a broker, agent, or representative; but taking orders for or selling goods, wares, and merchandise by travellers or correspondence is not carrying on business within the meaning of the Act, if the corporation has no registered agent or office in Ontario. In granting licences the Lieutenant-Governor in Council may, *inter alia*, require evidence as to the origin and objects of the corporation. When licensed under the Act, a corporation may hold land in the province as if it were a home corporation. Notice of the granting of the licence is to be gazetted.

This Act, it may be noted, is only one instance of a growing policy on the part of the colonies to regulate immigrant trading corporations.

Cold Storage (No. 26).—This Act enables any five or more persons desirous of carrying on the business of storage of fruits, dairy products, animal products, canned goods, dried vegetables, and all similar food products to form themselves into an association for the purpose by signing and filing a certificate in a statutory form. Rules of management are to be framed, the shares are to be transferable, and the liability of shareholders is to be limited. Disputes between the members are to be referred to arbitration. The Lieutenant-Governor in Council is empowered to make a grant—not exceeding five hundred dollars—towards the cost of any cold storage building for such association.

Loan Corporations Act (No. 27).—This amends the Building Societies and Other Loan Corporations Act of 1897 in certain particulars, such as increasing or decreasing the permanent capital stock, enlarging the scope of the investing powers, and prohibiting the use by an unregistered association of such words as "loan," "mortgage," "trust," "investment," or "guarantee," in combination with "corporation."

Voting Machines (No. 37).—This has nothing to do with political organisation, but relates to certain mechanical contrivances for recording votes, and authorises their adoption by municipalities. It is a condition, however, that any voting machine must be constructed so as to provide facilities for secret voting.

Shops Regulation (No. 43).—This is a useful measure in furtherance of health. No shopkeeper is to sell any garment made in any dwelling-house or building without a permit from the inspector stating that the place of manufacture is thoroughly clean and otherwise in a good sanitary condition.

Forest Fires (No. 45).—To further prevent these disastrous conflagrations the Commissioner of Crown Lands is authorised to appoint forest rangers with power to prosecute offenders against rules, and to summon aid in emergencies to extinguish fires.

The San José Scale (No. 46).—Spraying, washing, or fumigation may be used—in lieu of burning—in the treatment of plants infested with this disease.

Noxious Insects (No. 47).—Any municipality may adopt this Act and make regulations under it for the prevention and destruction of insects injurious to trees, shrubs, and other plants.

Barbary Shrub (No. 48).—The planting of this shrub is prohibited upon any land used for farming purposes.

Game (No. 49).—No person not resident and domiciled in the province is by this Act to hunt or kill any game-bird or animal except on the terms of a licence to be first obtained. Special permits may be granted to guests of a resident. No hunting or shooting is to take place on Sunday. Close seasons are fixed for moose, elk, game-birds, squirrels, hares, swans, geese, snipe, plover, beavers, otters, muskrats, etc. Protection may be granted to migratory and non-migratory birds in danger of extinction. A licence must be obtained to hunt deer, moose, reindeer, or cariboo. No person is to take deer in or leaving water. Hunting deer by "crusting" or "yarding" is declared unlawful. Yachts or steam-launches are not to be used to hunt wild ducks or geese, nor swivel guns nor "sunk punts." Poisoning is also prohibited, and trapping and snaring, except beavers, otters, and muskrats; so is shooting for hire, taking eggs, and going masked with firearms near preserves. No one is to sell game without a licence. No one is to trespass on enclosed land in pursuit of game after notice not to do so.

A Board of Game Commissioners is constituted to secure the observance of the above laws, with subordinate officers called "game wardens." Licensed guides may also be appointed. The Act is not to apply to Indians or settlers killing game for food.

Fisheries (No. 50).—This is another elaborate Act regulating fisheries. Fishery overseers are to be appointed to enforce the regulations. Leases and licences to fish may be granted on proper terms. Nets and snares are not to be used without licence. Fish under a certain size are not to be sold. No person is to take more than fifteen pounds a day of speckled trout, no non-resident more than ten salmon in a day.

Wolf Bounty (No. 51).—This Act makes production of the head of the wolf before a justice of the peace sufficient in certain localities.

Public Schools (No. 53).—An urban school board may by this Act expend a sum not exceeding two hundred dollars in encouraging gymnastics and other athletic exercises.

Industrial Schools (No. 56).—This Act provides for placing out in a foster home any child who has been an inmate of an industrial school for three years.

Municipal Sanatoria for Consumptives (No. 57).—This Act empowers any municipality to establish and equip a sanatorium for the treatment of consumptives maintainable out of the rates, and to be managed by a board of five trustees; one-fifth of the cost may be contributed by the Lieutenant-Governor in Council.

7. PRINCE EDWARD'S ISLAND.[1]

[*Contributed by* H. Stuart Moore, Esq.]

Act passed—19.

Court of Chancery.—No. 2 reduces the scale of fees for masters, registrar, counsel, and solicitors, and enables trustees to retire from their trusts by transferring their securities to the registrar of the Court. The Court of Chancery is also given power to award damages in addition to, or in substitution of, injunctions in actions for breach of contract and the like, and such damages may be assessed by the Court without the intervention of a jury.

Intoxicating Liquors (No. 3).—The Prohibition Act, 1900, makes it a penal offence for any person to sell or barter, or in consideration of the purchase of any other property, give, to any other person any intoxicating liquor. Vendors appointed under the Act may supply liquor in quantities of not less than five gallons to legally qualified physicians, chemists, or druggists, to clergymen for sacramental purposes, or for use in some art, trade, or manufacture. When the sale is for medical purposes, it can only be made on a certificate of a medical man affirming that such liquor has been prescribed as a medicine and not as a beverage. The first and second offences entail a penalty of one hundred and two hundred dollars respectively, and the third and every subsequent offence imprisonment for a term of six months.

Taxation.—No. 6 imposes an annual tax on the following companies: fire insurance whose principal office is not within the province, $150; local fire insurance, $75; life insurance whose principal office is not within the province, $250; accident and guarantee, $50; trust, loan, or building, $225; telegraph, $375; banking (one office), $75; other banks, $200; electric and gas, $100; common carriers, $100; express, $150; brewers and distillers, $500; other companies whose principal office is not within the province, $100.

Public Offices (No. 7).—The time for the transaction of business in all Government offices is to be from 9 a.m. to 4 p.m., except that from May 15th to October 31st they shall close at 1 p.m. on Saturdays. Offices are not to open on public holidays or any day appointed as a holiday by the Governor-General.

Appropriation.—No. 8 makes an appropriation out of the funds in the public treasury for the different departments of the public service.

[1] The Session 63 Vict. commenced May 8th, 1900. Of the Acts passed, nine would in the United Kingdom be considered as local or private Acts.

8. PROVINCE OF QUEBEC.

[*Contributed by* Edward Manson, Esq.]

Acts passed—127, of which 79 were Local or Personal.

Health: Vaccine.—No 5 authorises a loan to a vaccine establishment for the production of pure vaccine.

Licences (No. 12).—This is an elaborate code of three hundred and forty-two sections in three parts. Part i. regulates the sale of intoxicating liquors, and the keeping of inns, restaurants, temperance hotels, railway buffets, dining-cars, steamboats, and clubs. It also regulates prosecutions for offences under the Act. Part ii. deals with other licences. Part iii. prescribes the duties of collectors.

Part i.—No licence is to be issued for any place where there is a by-law prohibiting the sale of liquor under the Canada Temperance Act.

Selling intoxicating liquor in any mining district without a licence is punishable by a fine of from seventy to one hundred dollars. No intoxicating liquor is at any time to be sold to any person under eighteen in a licensed club, and there is a penalty on such a person frequenting bars or purchasing intoxicating liquors for his own use. There is a long catalogue of penalties for offences against the Act. Every inn and temperance hotel in a village or country parts is to contain at least three bedrooms for the use of travellers, and stabling for at least four horses. In towns the number of bedrooms must be five. Not more than one drinking bar is to be kept. Intoxicating liquors are not to be sold after eight in the evening to soldiers, sailors, apprentices, or servants.

S. 147 introduces a form of family self-help in the case of drunken members. By it the husband, wife, father, mother, brothers, sisters, curator, tutor, or employer of any person who has the habit of drinking intoxicating liquors to excess—also the municipal council or mayor, *curé*, pastor, or justice of the peace, and certain other persons—may give notice in writing to any licensee not to sell or deliver intoxicating liquor to the person having such habit. Contravention of the notice exposes the licensee to a penalty of from ten to five hundred dollars. In addition, if the person served commits an assault or does damage in his intoxication, the licensee is liable to an action in respect of such wrong.

The duty chargeable for an inn or restaurant licence in Montreal, if the rent of the premises is $400 or less, is $400; or $600 if the rent is under $800.

Part ii. requires and regulates licences for auctioneers, pawnbrokers, peddlars, ferries, billiard tables, powder magazines, circuses and menageries, and prescribes a tariff of duties.

Part iii. provides for the collectors of provincial revenue making a careful search for infringements of the law.

Taxation of Commercial Corporations (No. 13).—This Act imposes a tax on insurance companies other than mutual or marine insurance companies. In the case of life insurance companies the tax is one per cent. on the gross premiums; in the case of other companies two-thirds per cent. The Act also amends the law by requiring commercial corporations or companies to return a detailed statement of their capital, offices, factories, workshops, parlour and buffet cars, etc., to the Provincial Treasurer.

Agricultural Societies (No. 15).—These societies were constituted in 1869 to promote agriculture and horticulture by holding meetings and exhibitions, importing new varieties of plants, improving the breeding of animals, organising ploughing matches, etc. This Act enables the Council of Agriculture to appoint a director for each agricultural society, and provides for the election of a president and a vice-president.

Public Buildings (No. 22).—The importance of the doors of theatres, halls, etc., being hung so as to open outwards was recognised in 29 & 30 Vict., c. 22, s. 1. It is now extended to "shops and stores of all sizes and buildings of three stories or more over the ground floor occupied as offices."

Mining Companies (No. 33).—This Act empowers mining companies incorporated by letters patent under the Great Seal of the province to prospect and explore for mines and minerals, work them, erect mining plant, acquire vessels, etc. The liability of the shareholders may be limited, provided no share is issued under par or, if a discount is allowed, it is authorised by a by-law of the company, ratified by a general meeting, and transmitted to the Provincial Secretary. Certificates of shares are to bear the words underlined in red ink "Subject to call" or "Not subject to call."

The charter, prospectus, stock, certificates, bonds, contracts, agreements, notices, advertisements, bills of exchange, cheques, etc., of the company are to bear under the name of the company "No personal liability." If calls remain sixty days unpaid, the directors may confiscate and seal the shares.

Directors are to be liable jointly and severally to the labourers, servants, and apprentices of the company for all wages not exceeding one year's, but the company must first be sued.

Foreign mining companies are not to seal their shares, stocks, or debentures in the province without authorisation from the Lieutenant-Governor. To obtain this authority the company must deposit its charter and establish its solvency. It must also appoint an agent for service within the province. The authorisation is then to be gazetted.

Fire Insurance (No. 34).—This extends to Church of England dioceses the same facilities for establishing mutual fire insurance companies as are now enjoyed by Roman Catholic dioceses with regard to Church property.

Insurance Companies: Inspection (No. 35).—This Act provides for the

valuation by the official Inspector of Insurance of the policies of insurance companies once in every five years, or oftener at the discretion of the Provincial Treasurer. The valuation is to be based on the mortality tables of the Institute of Actuaries of Great Britain and on a rate of interest of three and a half per cent. per annum. "Policies" is to include annuity contracts. If the Inspector is of opinion that the liabilities of the company exceed its assets, or that its assets are insufficient to justify the continuance of its business, or that it is unsafe for the public to effect insurance with it, he is to report the fact to the Provincial Treasurer.

Guarantee Companies as Sureties (No. 44).—A person is not infrequently obliged by law, a judgment, or an order to make a deposit to pay costs or to furnish security before the Courts. In such a case the present Act authorises his furnishing security by an incorporated surety or guarantee company having an office in the province and specially authorised by the Lieutenant-Governor to become surety before the Courts. Strict conditions precedent to authorisation are imposed. Our Courts have long ago accepted the bond of a guarantee society as, say, for a receiver's security.

IX. WEST INDIES.

1. THE BAHAMAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed—23.[1]

Judge's Salary (No. 2).—The Chief Justice's Salary Act, 1900, fixes £1,000 as the yearly salary of the Chief Justice of the Bahamas.

Education (Public) (No. 4).—The Education Act, 1880, Amendment Act, 1900, provides for an inspector and general superintendent of schools in the colony.

Census, 1901 (No. 5).—The Census Act, 1900, provides for taking the census in 1901 of the Bahama Islands.

Fisheries (No. 6).—The Fisheries (Dynamite) Act, 1900, imposes penalties to prohibit the use of explosives for the purpose of catching fish within the territorial waters extending to one league from the coast of any of the Bahama Islands.

Public Moneys (No. 7).—The Debenture Redemption Act, 1900, empowers the Governor in Council (1) to set apart out of the surplus moneys invested under the Investment of Public Moneys Act, 1898, the sum of £10,000; and (2) to appropriate annually out of the general

[1] The Acts are numbered consecutively for the regnal year, 63 Vict. All Acts are passed for the approval of the Crown by the Governor and the Legislative Council and Assembly of the colony.

revenue a sum not exceeding £900, for the purpose of establishing a sinking fund for paying off the Treasury debentures issued under the Debenture Act, 1888.

House of Assembly (No. 21).—The Speaker and Deputy Speaker Act, 1900, fixes the salary of the Speaker of the House of Assembly of the Bahama Islands at £200, and provides for the election of a Deputy Speaker by the House of Assembly. No member of the House of Assembly who is a member of the Executive Council or holds office for profit under the Crown to be eligible for election as Speaker.

2. BARBADOS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Acts passed (1900)—43.[1]

Hurricane Loan (No. 4).—The Hurricane Loan (Amendment) Act, 1900, amends the principal Act (No. 15 of 1899) in respect of the provisions for borrowing £50,000 from the Imperial Government and the terms and conditions for securing the repayment of the same. The interest is to be two and three-quarters per cent., and the principal is repayable by twenty equal annual instalments, and both principal and interest are charged upon the general revenue and assets of the colony.

Poor Law (No. 8).—The Settlement of the Poor and Bastardy (Amendment) Act, 1900, amends the principal Act (No. 20 of 1897), and gives power to the putative father to obtain a review of the order made upon him for maintenance of the bastard upon showing the ability of the mother to maintain, either wholly or in part, or his inability from altered circumstances to comply with the order.

Newspapers (No. 11).—The Registration of Newspapers Act, 1900, makes it compulsory on printers and publishers of all newspapers to send in to the Registrar a return annually showing the title of the newspaper and the names, occupations, and addresses of all the proprietors. Newspapers owned by any company incorporated under the Companies (Barbados) Act, 1892, are exempted from the provisions as to registration.

Stamp Act (No. 12).—The Stamp Act, 1900, imposes stamp duties on the various instruments mentioned in the schedule to the Act, and makes provisions as to the stamps to be used and the stamping of documents.

Married Women (No. 13).—The Married Woman's (Amendment) Act, 1900, amends the principal Act (1891), and empowers a magistrate, on a summons taken out by a deserted wife, to order payment by the husband of alimony by weekly sums not exceeding £2.

Customs (No. 15).—The Customs Tariff Act, 1900, imposes a tariff

[1] Acts are passed by the Governor, the Council and the Assembly of the island, and are numbered consecutively for the calendar year.

which is to come into operation by proclamation of the Governor, to be made immediately upon the rejection by the Senate or Congress of the United States of the Convention agreed to between her Britannic Majesty and the President of the United States, and is to continue in operation until December 31st following. By subsequent Customs Act (No. 18 of 1900), the preceding Act (No. 15 of 1900) is repealed, and certain specific customs duties are imposed, and the operation of the Customs Tariff Act, 1899,[1] and amending Acts thereto is suspended until the Convention, then under consideration between her Majesty the Queen and the President of the United States, for reciprocal trade relations between the United States and Barbados shall come into operation and thereupon this Act shall be repealed.

Pensions (No. 20).—The Pensions (Amendment) Act, 1900, makes sixty years as the earliest age for the voluntary or compulsory retirement of public officials.

Quarantine (No. 21).—The Quarantine (Amendment) Act, 1900, makes the incubation period for cholera six days, and for yellow fever, smallpox, and plague fourteen days, and in the case of plague establishes special quarantine regulations.

Police Magistrates (No. 23).—The Police Magistrates (Amendment) Act, 1900, amends the principal Act (1897), and makes every police magistrate, during his duration of office, an *ex-officio* justice of the peace for Barbados. The amended provisions give persons committed for trial the right to have official copies of the depositions; in summary jurisdiction cases the complainant and defendant are entitled to official copies of the proceedings; persons desirous of appealing from decisions of police magistrates are likewise entitled to official copies of the proceedings before the magistrates. Power is given to magistrates authorised to order imprisonment to adjudge hard labour. Persons charged are to be entitled to adduce evidence in defence, and to have the case adjourned for the production of their evidence. Young persons under the age of sixteen years charged with an indictable offence, other than homicide, may be dealt with summarily, provided they consent, after being informed of their right to be tried by a jury. In the case of males under sixteen a private whipping may be adjudged as the punishment in lieu of fine or imprisonment. Parents or guardians of the young person are to have the right to advise in private with such young person on the question of being tried summarily or by jury.

Liquor Licence (No. 24).—The Liquor Licences (Amendment) Act, 1900, subjects licensed persons to fines on first and second convictions, and to forfeiture of their licence in addition to fines on third convictions for

[1] By the Tariff Act of 1899 certain articles produced in the United States, in Great Britain and in British possessions, and also in countries having a most favoured nation treaty with Great Britain, were placed on the free list, and others similarly produced were placed on lower tariff terms than the general tariff created by the Act.

permitting the licensed premises to be used by disorderly and drunken persons, by prostitutes, by constables on duty, and for gambling.

Public Health (No. 26).—The Public Health (Amendment) Act, 1900, subjects the sanitary arrangements in all public elementary schools to the control of the Commissioner acting under the Public Health Act of 1898.

Education (No. 27).—The Education (Amendment) Act, 1900, provides for the training of primary school teachers under the control and supervision of the Education Board.

Savings Banks (No. 28).—The Savings Bank (Amendment) Act, 1900, reduces the rate of interest to depositors from three per cent. to two per cent. per annum, and makes provisions for the establishment of district savings banks.

Court of Appeal (No. 29).—The Assistant Court of Appeal Act, 1900, is divided thus :—

Part i.—*Constitution of Court.*—The Assistant Court of Appeal is to consist of three judges, but for the purpose of issuing process one judge to constitute the Court. The appointment of the judges is to be made by the Governor ; the salary £450 per annum.

Part ii.—*Original Jurisdiction.*—The Assistant Court of Appeal is to possess an original jurisdiction in actions of debt over £20 and under £50 ; in actions of dower in respect of land not exceeding £500 in value ; and in personal actions where damages claimed are over £10 and under £50 ; no jurisdiction in actions for libel, slander, criminal conversation, seduction, or breach of promise of marriage. The Court to have original jurisdiction in real actions as to lands not exceeding £50 in value, or of rental value not exceeding £10 a year, and power in certain cases to adjudge possession to the landlord against tenant holding over. An original equitable jurisdiction is given, within certain limits as to the amount in question, in suits for or relating to the administration of real and personal estate, execution of trusts, foreclosure, specific performance, vesting orders, maintenance of infants, dissolution, etc., of partnerships, relief against fraud, partition, proceedings as to settled estates, injunction. Probate jurisdiction within the limit of £50 value may be exercised.

Part iii.—*Appellate Jurisdiction.*—The Assistant Court of Appeal is to exercise appellate jurisdiction over the decisions of all police magistrates and judges of petty debt Courts.

Part iv.—Appeals may be had from the decisions of the Assistant Court of Appeal to the Chief Judge of the colony sitting as a Court of Error, and in matters within the equitable jurisdiction of the Court, to the Court of Chancery of the colony.

Part v. contains miscellaneous provisions.

Public Health (No. 36).—The Public Health (Amendment) Act, 1900, adds plague to the infectious diseases enumerated in the Public Health Act of 1898.

Public Conveyances (No. 37).—The Omnibus Livery and Hackney Carriage Act, 1900, provides for the issue of licences to persons keeping and letting out to hire omnibuses and hackney carriages, and regulates the fares and other matters incidental to public conveyances.

Police (No. 38).—The Parish Constables Act, 1900, consolidates and amends the Act relating to parish constables.

Highways (No. 39).—The Highways Act, 1900, consolidates and amends the Act relating to highways.

3. BERMUDA.

[*Contributed by* The Hon. Reginald Gray, *Attorney-General.*]

Acts passed—57.

The volume of legislation for 1900 considerably exceeded that of any previous year, and included six consolidating Acts, besides a lengthy and comprehensive Post Office Act consolidating nineteen Acts on this subject with numerous amendments.

A new departure was made by continuing several Acts of temporary duration by the means of two Expiring Laws Continuing Acts instead of the objectionable method previously in use of continuing each of such Acts, or each series of Acts on the same subject, by a separate Act.

Of the fifty-seven Acts passed, the following seem of sufficient importance to be specially noted:—

Parish Assessment (No. 3).—Great difficulties having been experienced in the collection of parish assessments in consequence of changes in the ownership of land not being notified to the parish vestries, this Act was passed to require all persons becoming entitled to land to give notice thereof to the vestry clerk, and to enable the vestries to make transfers of real property without requiring the production of documents of title.

Treaty (No 9).—The Treaty of Washington Act, 1900, was passed to make provision for carrying into operation the articles of a treaty negotiated in 1899 between Great Britain and the United States for improving the conditions of trade between the latter country and Bermuda by making reciprocal reductions in the import duty levied on certain articles, the product of the soil or industry of the two countries. The treaty awaits the ratification of the President and Senate of the United States.

Summary Jurisdiction (No. 14).—This Act adopts some of the provisions of the English Acts on the same subject, and defines the mode by which the Court may enforce payment of any fine, penalty, or forfeiture imposed by any Act, past or future, where no authority for this purpose is given by the Act imposing it.

Criminal Law (No. 26).—The Criminal Evidence Act, 1900, is practically a transcript of the Imperial Criminal Evidence Act, 1898, and repeals special provisions to the same effect in previous enactments.

Short Titles (No. 33).—This Act provides short titles for seventy Acts, and there are now comparatively few Acts on the colonial Statute Book which cannot be cited in this way. An effort will be made in the next compilation of the Bermuda laws to substitute the authorised short titles for the full titles, which in many of the earlier Acts are very lengthy.

Census (No. 35).—Provision is made by this Act for the taking of the usual decennial census in 1901 on a day to be fixed by the Governor in Council. The appropriation for the payment of the Commissioners and their clerk and the enumerators was £366, exclusive of the cost of printing, etc.

Post Office (No. 45).—The Post Office Act, 1900, which was prepared in conjunction with an expert sent out from England for the purpose, contains one hundred and twenty one sections, and is based on the Post Office Consolidation Bill, which was drawn up three or four years ago for submission to the Imperial Parliament, with such additions as were necessary to adapt the measure to local requirements. The prescribed form of postal order is considered to be an improvement on that in use in England. This Act would be a useful model for other colonies legislating on this subject.

Intoxicating Liquors (No. 47).—This Act, which consolidates the principal Act of 1880 and six amending Acts, is a useful measure regulating and controlling the liquor traffic.

Pilotage (No. 53).—Under this Act officers in command of foreign national ships are exempted from certain payments and penalties imposed by the Pilot Act, 1898, on masters of vessels for refusing to take a pilot and other kindred offences.

Volunteers (No. 55).—This Act amends the Bermuda Volunteer Act, 1892, in various respects, providing (*inter alia*) for the legal recovery of subscriptions and fines due under the rules of the corps and for the protection of the property of the corps, etc., and gives a right of appeal to any volunteer convicted of an offence where the sum adjudged to be paid exceeds £5 or the imprisonment exceeds one month.

Militia (No. 57).—The Bermuda Militia was raised under the Act of 1892, and this Act makes considerable amendments which subsequent experience has shown to be necessary. It provides for the embodiment of the militia in case of imminent national danger or of great emergency, or of actual or apprehended invasion or attack on the colony, and provides that the officers and men and their wives and families shall be entitled to the same pay, allowances, pensions, and other emoluments and advantages as the militia of the United Kingdom.

4. BRITISH GUIANA.[1]

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Ordinances passed (1900)—41.[1]

Customs (No. 4).—The Customs Duties Ordinance, 1900 (No. 2), repeals a like Ordinance of 1900, and imposes specific and *ad valorem* duties on certain scheduled articles and exempts other scheduled articles from all duties. But the whole tariff of duties is subject to variation in respect of the countries of origin of imported merchandise being the United States, Great Britain and British possessions, and countries entitled by convention with Great Britain to the most favoured nation treatment. And the tariff in respect of certain specifically mentioned articles of merchandise varies conditionally upon the conclusion and continuance of a Reciprocal Trade Convention between the United States and Great Britain in respect of British Guiana.

Taxation (No. 5).—The Tax Ordinance, 1900, imposes an acreage tax of two and a half dollars per acre of land under cane cultivation, and of two cents per acre of empoldered land, and appropriates the proceeds of such tax in diminution of the amounts payable by the employers of indentured immigrants to the Immigration Fund. During such period as the Reciprocal Trade Convention between Great Britain and the United States in respect of British Guiana shall be in force, in addition to the foregoing acreage tax, one and a half dollars per acre on sugar plantations of over fifty acres shall be levied for the benefit of the general revenues of the colony. Tonnage, rum and spirits, stamp and licence duties are also imposed, and rates of storage rents for goods in the Government bonded warehouses are fixed.

Evidence (No. 6).—The Evidence Ordinance, 1893, Amendment Ordinance, 1900, amends and is consolidated with the principal Ordinance. It embodies all the provisions of the Imperial Criminal Evidence Act of 1898.

Legal Tender (No. 8).—The Guilder Coinage Demonetisation Ordinance, 1900, declares that from and after January 1st, 1901, no tender of payment in certain silver coins known as half-bits, quarter-guilders or bits, half-guilder, guilder, two-guilder, and three-guilder tokens shall be deemed to be a lawful tender.

Seamen (No. 10).—The Seamen's Lodging Houses Ordinance, 1900, prohibits any person keeping a seamen's lodging house unless he is registered under the Public Health Ordinance, 1878, and all the provisions of that Ordinance are to apply to every seamen's lodging house. All

[1] Ordinances are made by the Governor with the advice and consent of the Court of Policy, and are numbered consecutively for the calendar year.

holders of wine, etc., licences are absolutely disqualified from keeping a seamen's lodging house.

Poisons (No. 13).—The Pharmacy and Poisons Ordinance, 1899, Amendment Ordinance, 1900, amends and is consolidated with the principal Ordinance, and makes provisions restricting the sale of poisonous and other deleterious drugs and chemicals.

Inquests on Accidents (No. 14).—The Investigation of Accidents Ordinance, 1900, empowers the Governor to appoint any person or persons possessing legal, medical, engineering, or other special knowledge to hold a Court to investigate the causes of any particular accident causing loss of life or bodily injury which appears to the Governor to require formal investigation. The Court is to have all the powers of a Court of Summary Jurisdiction and certain other powers to enable it to conduct its proceedings, and is to make its report to the Governor.

Education (Elementary) (No. 19).—The Elementary Education Ordinance, 1876, Amendment Ordinance, 1900, amends and is consolidated with the principal Ordinance of 1876. The powers and duties vested in the persons appointed by the Governor under the principal Ordinance to be educational district officers are to be exercisable by all members of the combined Court, ministers of religion, justices of the peace, and others. Powers of detention by teachers of children sent to industrial schools and for the employment of children in agricultural pursuits on the plantations during prescribed hours are given.

Partnership (No. 20).—The Partnership Ordinance, 1900, after defining "the Court" to mean any judge of the Supreme Court of British Guiana and "business" to mean every trade, occupation, or profession, codifies the partnership law of the colony by declarations and provisions similar to those contained in the Imperial Partnership Act of 1890.

Labour: Immigration (No. 27).—The Immigration Ordinance, 1891, Amendment Ordinance, 1900, amends and is consolidated with the principal Ordinance of 1891. The cost of the return passage of Indian immigrants allotted to employers in 1898 and since is to be provided by the employers except so far as such cost falls by law on the immigrants. Every Indian immigrant introduced during and since 1898 who completes ten years' continuous residence in the colony, and becomes entitled to a certificate of exemption from labour, is to be provided with a return passage to the port of India whence he sailed on payment by a male immigrant of one-half and by a female of one-third of the cost of the passage. Children or dependents or wives of such immigrants are entitled to return with their fathers or husbands without payment, subject to certain provisoes contained in the Ordinance. Power is given to immigrants entitled to the return passage to surrender their right in consideration of a grant or transport of land in the colony. Any settlements of immigrants may be declared village settlements by the Governor in Council.

Debtors' and Companies' Liquidation (No. 28).—The Debtors and Companies in Liquidation Ordinance, 1900, amends and is consolidated with previous Ordinances. The insolvency of a judgment debtor against whom a receiving order is made shall be deemed to commence at the time when the receiving order is made or of the first act of insolvency by the debtor within three months next preceding the date of the order.

Insolvency (No. 29).—The Insolvency Ordinance, 1900, contains one hundred and thirty clauses and two schedules: (1) as to meetings of creditors; (2) as to proof of debts. The Ordinance follows the several clauses of the Bankruptcy (Imperial) Act of 1883, with such variations as to jurisdiction and administration as are applicable to the Colony.

Contempt of Court (No. 31).—The Contempt of Court Ordinance, 1900, enables a judge of the Supreme Court of the Colony to punish summarily with fine or imprisonment any person who commits a contempt in the presence of the Court when sitting. The punishment is not to exceed one hundred and twenty dollars fine, or one month's imprisonment without hard labour. Other contempts not in the presence of the Court are to be tried before a judge of the Court and a jury.

Medical Practitioners (No. 32).—The Medical Ordinance, 1886, Amendment Ordinance, 1900, imposes restrictions on unqualified persons practising for gain or reward medicine or surgery in any medical district wherein a duly qualified practioner resides. Provisions are contained for the registration of midwives, dispensers, and nurses.

Judicature (No. 36).—The Supreme Court Ordinance, 1893, Amendment Ordinance, 1900, amends and is consolidated with the principal Ordinance. For the limited civil jurisdiction conferred by the principal Ordinance in certain actions and matters is substituted the following :—

(1) Actions of debt or damages up to $2,500.
(2) Actions for recovery or transport of immovable property, specific chattel or penalty up to $2,500.
(3) Actions for enforcing mortgage claims up to $2,500.
(4) Opposition suits up to $2,500.
(5) Actions of interdict, mandament, mandamus, or appointment of receiver up to $2,500.
(6) Actions for partition or sale up to $5,000.
(7) Administration actions up to $5,000.
(8) Actions for dissolution of partnership up to $5,000.
(9) Actions against agents for an account up to $2,500.
(10) Counterclaims in respect of any of the foregoing matters up to same amount as actions.
(11) Actions for debts which by the Rules of Court may be recovered by summary process; but, if leave to defend be given, then up to $2,500.
(12) Upon consent of parties in writing filed in the registry, the Court may exercise jurisdiction up to any amount.

Sale of Bread (No. 37).—The Bread (Making and Sale) Ordinance, 1850, Amendment Ordinance, 1900, makes it compulsory on all bakers to sell bread (except French or fancy bread or rolls) by weight.

5. BRITISH HONDURAS.

[*Contributed by* WALLWYN P. B. SHEPHEARD, ESQ.]

Ordinances passed—20.[1]

Quarantine (No. 3).—The Quarantine Ordinance, 1900, makes twenty-one days the period for the incubation of infectious diseases, and amends the existing quarantine laws accordingly.

Oaths (No. 7).—Any juror may, on conscientious grounds, make a declaration instead of taking an oath.

Licensing (No. 13).—The Belize Trades' Licensing Ordinance, 1900, imposes licence duties in respect of the premises occupied by persons carrying on any of the dutiable trades contained in the schedule to the Ordinance, which are (1) trader or commission agent; (2) billiard-room keeper; (3) commercial traveller; (4) solicitor; (5) physician or surgeon; (6) general contractor.

Marriages (No. 18).—The Marriage Ordinance, 1900, amends the like Ordinance, 1889, by providing that no marriage celebrated by a person registered under that Ordinance as a minister for celebrating marriages shall be avoided by reason only of such person not being at the time of such marriage or of such registration a minister of religion, but every person so registered shall be deemed competent to celebrate marriages.

Pilotage.—No. 19 amends the laws as to pilotage.

Civil Service Pensions (No. 20).—The Pensions Ordinance, 1900, charges all pensions on the general revenues of the colony. The Governor in Council may make, vary, and revoke regulations as to pensions, etc., to persons in the public service of the colony, but no pension, gratuity, or other allowance shall be granted without the previous consent of the Secretary of State for the Colonies. The age for compulsory retirement to be not below sixty years. Pensions are to cease on bankruptcy.

6. JAMAICA.

[*Contributed by* S. LESLIE THORNTON, ESQ.]

Laws passed—40.

Succession Duty.—The Succession Duty Amendment Law[2] (No. 6) amends the existing Law (No. 20) of 1898 by the addition of provisions similar to those contained in 16 & 17 Vict., c. 51 (Imperial), relating to (1) succession

[1] The Ordinances are passed by the Governor and the Legislative Council, and are numbered consecutively for the calendar year.

[2] For this Law, as well as for the majority of other Laws passed during the year, there is no short title.

on accrual by survivorship of a joint property; (2) the exercise of power of appointment; (3) property the subject of a charge, etc., determinable by death; (4) dispositions of property reserving benefits to grantor; (5) fraudulent dispositions of property; and (6) procedure for enforcing the Law.

Criminal Law Appeal.—This Law (No. 7) supplies the procedure to be followed in cases of appeals from judgments of resident magistrates in criminal cases, as distinguished from that in appeals from petty sessions. An appeal is to lie for matter of law only and not for matter of fact. Errors or defects in substance or form in any information, indictment, judgment, order, or conviction are no ground for an appeal unless the point has been raised at the trial, or the Appellate Court is of opinion that injustice will be caused thereby. No appeal is allowed on any ground that is not stated in the statement of the grounds of appeal which the Law requires to be given by the appellant, unless an amendment thereof has been made and allowed.

Coast and Harbour Lights (No. 8).—This consolidates and amends the existing law.

Interpretation.—This Law (No. 9) in substance is a reproduction of the English Interpretation Act of 1889, with such slight alterations as are required to suit local circumstances.

Coroners.—This Law (No. 11) consolidates with slight amendments into one short Law of twenty-seven sections all the scattered enactments relating to this subject, and for this purpose repeals *in toto* nine, and in part seven, previously existing enactments. It is modelled on the Imperial Act, but differs slightly to meet local requirements. The resident magistrate in each parish is the coroner. Upon receiving information of any death under circumstances likely to require an inquest, the coroner or any justice of the peace, or officer of the police force not below the rank of sergeant, may direct a medical practitioner to make a post-mortem examination of the body, while at the same time the police have to make an investigation into the circumstances. The body may be buried unless an order to the contrary is issued by the coroner, after his consideration of the reports sent in to him as the result of the above enquiries. The coroner may abstain from holding an inquest whenever, as the result of such reports, any person is charged with a criminal offence in having caused the death, or where in his opinion there is no reason for suspecting any one to be criminally responsible for the death, or no further light is likely to be thrown on the case by holding an inquest. In the latter case the coroner must report his action, with a statement of the facts, to the Attorney-General, who may direct an inquest to be held. Neither the coroner nor the jury need view the body. Seven at least of the jury must concur in the verdict, and failing such concurrence, the coroner may adjourn the inquest to the next circuit Court to be held in the parish. By s. 23 the Governor in Privy Council may during the prevalence of an endemic or epidemic disease prohibit the holding of inquests in certain public institutions in certain cases.

Dealers in Old Metals.—Law No. 12 amends the existing law by extending the powers of the police in the direction of searching and visiting the premises of dealers in this trade. Dealers also are required by law to produce all books and metals for inspection by the police whenever required, to give notice to the police of all articles received by them which answer the description of articles stolen, and of which notice has been given to them by the police. Dealers are further required to keep all old metals in the same condition for seventy-two hours after their purchase. In the case of stores belonging to her Majesty the onus of proving that he came lawfully by them is placed on the dealer.

Towns Police (No. 14).—This Law enables the Governor by Order in Council to extend the provisions of the Kingston Police Law (No. 36 of 1881) to other towns in the island.

Landlords' Bailiffs.—The Landlords' Bailiffs Law (No. 17) is intended to prevent injustice to poor and ignorant persons by the appointment by landlords of improper persons to distrain for rent. The Law requires all such bailiffs to procure an annual licence (fee £1). The application for the licence has to be made in the resident magistrate's Court, after notice of such application, accompanied by certain particulars as to the applicant's previous history and a recommendation from two justices of the peace, has been given to the chief police officer of the parish, whose duty it becomes to enquire into the facts and report thereon to the resident magistrate. The resident magistrate, on the hearing of the application, has to examine the applicant as to the nature of his duties and his fitness, and can in his discretion grant or refuse a licence. The penalty for an offence against the Law is a fine not exceeding £10 or imprisonment up to three months. Persons licensed as bailiffs are made subject to the summary jurisdiction of the resident magistrate as if they were bailiffs of his Court.

Trial of certain Kingston Actions.—By Law No. 18 certain civil actions at law in which the debt or damage claimed exceeds £15 are in future to be transferred for trial from the resident magistrate's Court to a judge of the Supreme Court, and the necessary procedure is provided. The congestion of business in the resident magistrate's Court at Kingston, where the civil jurisdiction extends up to £50 in such cases, rendered this step desirable.

Artillery and Rifle Ranges.—The Artillery and Rifle Ranges Law (No. 23) introduces in substance the provisions contained in ss. 14–16 of 55 & 56 Vict., c. 43 (Imperial), and in s. 2 also regulates for such purposes private and public rights over the sea or tidal waters. S. 5 requires that notice of any by-laws proposed to be made under this Law shall be given to the locality affected, and all objections raised considered.

Soap.—The Soap Excise Duty Law (No. 26) requires soap manufacturers to obtain an annual licence (fee £1), and imposes a duty of 10*d.* per box of 56 lbs. on all soap manufactured in Jamaica, with the usual and necessary provisions for enforcing the payment of the same.

Marine Board.—The Marine Board Law (No. 27) is a consolidation of the legislation that has dealt with this subject during the years of 1896–8, with certain amendments. Of the amendments the most important is the reconstitution of the Court of Survey, now made to consist of the resident magistrate, sitting with two assessors of nautical engineering or other special skill and experience, one of whom is to be appointed by the Marine Board and the other selected from a list of persons periodically nominated by a body of local shipowners or merchants approved by the Governor. In s. 31 new provisions are made as to the mode in which the load-line is to be arrived at by the examiner prior to the issue by the Board of a sea-going certificate. Power to detain a ship is given by s. 63 in cases where anything is due to the Marine Board under the Law or otherwise, in respect of a ship, until payment, or until satisfactory security for payment is given.

Tobacco.—The Tobacco Duty Law (No. 28) requires tobacco manufacturers to obtain an annual licence (the fee varying in the case of cigars according to the quantity proposed to be manufactured in the year, but in other manufactures to be 5*s.*). A duty of 1*s.* per 100 cigars, of 1*d.* per 100 cigarettes (cigarettes 300 of which weigh more than one pound paying duty as cigars), and of 6*d.* per pound of pipe tobacco is also imposed, except in the case of exportation.

Registration of Birth.—This Law (No. 29) is, in effect, an amendment to the Registration Law of 1881, and is intended to procure the registration of the father in cases of illegitimacy. The ratio of illegitimate births to legitimate in Jamaica being for last year over 63 per cent., the information which the Law endeavours to procure is of obvious importance. By s. 4 the Registrar must register a person as the father of an illegitimate child when the mother and father either personally or by duly witnessed declaration acknowledge before him that such is the fact, or when, by the order of a resident magistrate, a person is declared to be the putative father of such a child. By s. 5 the Registrar is directed to enquire of the mother when giving information of the birth as to the paternity of the child, but only in the event of the mother voluntarily giving such information can the Registrar act on the information given. Where the mother alleges any person to be the father, the Registrar gives him notice that unless he is registered as father within forty-two days the Inspector of Poor will proceed under the Law to effect this. In default of the father so registering, the Law provides that proceedings similar to those taken in bastardy cases may be taken by the Inspector of Poor; and for the purposes of the Bastardy or Maintenance Laws any order made thereon shall be conclusive evidence of the facts set out in the order.

Arbitration.—The Arbitration Law (No. 33) is 52 & 53 Vict., c. 49 (Imperial), introduced into Jamaica with such slight changes as are necessary where the Court and officers referred to are differently designated.

Direct Steamship Service Subsidy.—This Law (No. 37) ratifies a

contract entered into between the Crown Agents on behalf of the British and colonial Governments with Elder, Dempster & Co. for a steamer service between Jamaica and the United Kingdom in consideration of a subsidy of £40,000 per annum (to be reduced in certain events); and authorises the Governor to pay one-half of the subsidy.

Various Laws of local importance were passed to carry out the recommendations of Sir David Barbour, who was commissioned by the Imperial Government to enquire into and report on the financial condition of the island, and also in consequence of the recommendation made by the commissioners appointed in reference to the working of parochial boards. Laws Nos. 1, 32, and 40 became necessary in consequence of the transfer of the Jamaica Railway from an American syndicate to the Government. Laws Nos. 1, 2, and 36 relate to loans, amounting in all to £453,000, advanced by the Imperial Government in aid of the local Government; and Laws Nos. 21, 31, and 34 provide for changes in the constitution of parochial boards, and in their mode of financial administration, with the view of simplifying and facilitating the collection of revenue.

7. TURK'S AND CAICOS ISLANDS.

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Ordinances passed—6.[1]

Marriages (No. 3).—This Ordinance recites that the Assistant Commissioner having solemnised marriages without having been appointed to his office under the hand and seal of the Administrator of the Government, as required by Ordinance No. 10 of 1873, and that doubts had arisen as to the validity of all such marriages, and declares the validity in law of all such marriages as if they had been solemnised by a person lawfully authorised to perform the ceremony.

Shipping Duties (No. 6).—The Transient Vessels Ordinance, 1900, exempts from light dues and compulsory pilotage inwards all transient vessels of fifty tons burthen or over arriving from parts beyond the seas and calling at any port of the dependency for orders or for provisions, fuel, or water for consumption on board the vessel and not engaging in any kind of trade with the dependency.

[1] The Ordinances are passed by the Legislative Board and the Governor of the colony. They are numbered consecutively for the calendar year.

8. TRINIDAD AND TOBAGO.

[*Contributed by* Wallwyn P. B. Shepheard, Esq.]

Ordinances passed (1900)—34.[1]

Customs (No. 2, 1900).—The Customs Amendment Ordinance, 1899, is to be read with the Customs Ordinance, 1880. It limits the power to remove proceedings to the Supreme Court from a stipendiary justice of the peace to cases where the fine or value of the forfeiture amounts to £50 or over; and by "value" is to be meant the value of the goods duty paid.

Census (No. 3, 1900).—This Ordinance makes provision for taking the census in 1901 on the night of Sunday, April 7th.

Labour Contracts (No. 4, 1900).—The Foreign Labour Contract Ordinance, 1899, makes it unlawful for any employer without the leave in writing of the Governor to engage any person to leave the colony for the purpose of being employed by such employer as a labourer in any foreign country. The Governor is empowered to grant leave provided that the employer enters into a bond to the Crown in the sum of £500 for the observance of the provisions of this Ordinance and the conditions contained in the contract made under this Ordinance, and also for payment of damages recovered by the labourer for breach of the contract. Power is given to the labourer to sue the sureties to the bond. Every contract between employer and labourer for performance of work in a foreign country is to specify

(1) Nature of work or service;
(2) Name of country and place therein where the work is to be performed;
(3) Name of country and place therein where employer's office is situated;
(4) Wages and rations;
(5) Times of payment of wages;
(6) A condition that the labourer shall on expiration or determination of contract be repatriated by and at the cost of the employer.

The contract is to be executed before a magistrate, who is to explain it to the labourer.

Registration of Deeds (No. 5, 1900).—The Tobago Deeds Registration Ordinance, 1900, enables the Governor to appoint a local official in Tobago to be the delegate of the Registrar-General and who shall forward to the Registrar-General of Trinidad such deeds as may be executed in Tobago and require to be registered in the office of the Registrar-General.

Education (No. 7).—This Ordinance empowers the council of the

[1] Ordinances are made by the Governor with the advice and consent of the Legislative Council, and private and public Ordinances are numbered together with reference to the calendar year.

Royal College of Trinidad to make rules and regulations in respect of the general management and discipline of the college.

Patents and Trade Marks (No. 10).—The Patents Design and Trade Marks Ordinance, 1900, enables the Governor to appoint a registrar and establish a registry of patents designs and trade marks. The Ordinance is divided into four parts containing rules and regulations: Part i., patents; part ii., designs; part iii., trade marks; part iv., general.

Statutes Revision (No. 14).—The Law Revision Ordinance, 1900, No. 1, repeals certain Ordinances set forth in a schedule, but saves from repeal any enactments not in the schedule which are in force under and by virtue of any of the Ordinances repealed, and also any enactments in which the repealed enactment has been incorporated.

The repeal of any enactment is not to affect any right to revenues of the Crown, or charges upon and collection of such revenues, nor the validity of acts done, rights or title acquired and remedies in respect thereof, discharge from debt, proof of past act, principles or rules of law or equity, and established jurisdiction and procedure, nor revive any jurisdiction, rule, or principle of Spanish or other law not then in existence or in force.

Colonial Loans (No. 16).—The Imperial Loans Ordinance, 1900, empowers the Governor to borrow from the Commissioners of her Majesty's Treasury the sum of £110,000 at $3\frac{3}{4}$ per cent. per annum, or such other rate as is applicable to local loans in the United Kingdom, to be repayable in fifty years by equal annual instalments of principal.

The loan is to be applied for railway extension and public works in Trinidad and roads and public works in Tobago. The principal money and interest thereon are to be a charge upon the general revenue and assets of the colony, with priority over all other charges thereon not then existing.

Power is given to the Governor, with the consent of the Commissioners of her Majesty's Treasury, at any time after the expiration of five years from the date of advance, to repay the amount then outstanding.

Military Forces (No. 18.)—The Local Forces Ordinance, 1900, amends and is consolidated with the Local Forces Ordinance, 1899. It provides for the application of the Army Act to local forces when assembled for training and to the volunteers on actual military service.

Judges (No. 21).—The Judges' Appointment Confirmation Ordinance, 1900, validates appointments made under the seal of the colony of the judges of the Supreme Court of the colony since the commencement of the Judicature Ordinance of 1879 as if the same had been made by letters patent under the provisions of such Ordinance.

Public Service (No. 25).—The Widows' and Orphans' Fund Ordinance, 1900, amends and is consolidated with a like Ordinance of 1898. Provisions are made for the case of members retiring from the public service of the colony with a wife living or with children chargeable on the fund, and before

such member has attained sixty-five years of age, and before he has contributed for thirty-five years.

Prisons (No. 27).—The Prisons Ordinance, 1900, enables the Governor in Council to appoint by proclamation any place as a convict depôt or any police station as a district prison, and establish labour yards. The Ordinance contains various provisions as to the transfer of prisoners, their employment, and other matters of prison regulations.

Savings Banks (No. 29).—The Savings Banks Ordinance, 1900, is consolidated with like Ordinances of 1889 to 1898, and provides for the appointment of a chief manager to be appointed by the Governor and to be assisted and controlled by a board of management consisting of the Colonial Secretary, the Auditor-General and the Receiver-General. The interest on deposits of over £500 is subject to certain special provisions.

Pensions (No. 30).—The Pensions Ordinance, 1900, establishes a scheme of pensions to be paid out of the general revenues of the colony.

Public Accounts (No. 31).—This Ordinance gives power to the Governor in Executive Council to determine the date for making up, submitting, and publishing any of the public accounts of the colony.

Corporal Punishment (No. 34).—The Corporal Punishment Ordinance, 1900, defines the term "corporal punishment" to mean whipping, flogging, and, in the case of female offenders, having the hair cut close.

Male offenders not above the age of sixteen years convicted before a Court of Summary Jurisdiction or on indictment of any of the following offences may be ordered to be whipped:—

(1) Simple larceny;
(2) Offences declared to be punishable as simple larceny;
(3) Stealing from the person;
(4) Larceny as a clerk or servant;
(5) Embezzlement by a clerk or servant;
(6) Receiving stolen goods;
(7) Aiding or abetting the commission of any of the foregoing offences;
(8) Attempts to commit foregoing offences.

Power is given to order male offenders of or over the age of sixteen to be flogged with the ordinary cat-of-nine tails on conviction of offences enumerated in the second schedule of the Ordinance. The sentence of the Court is to specify the number of strokes. Provisions in behalf of the offenders for the presence of the medical officer of the prison and remission and variation of the sentence are contained.

9. WINDWARD ISLANDS.

[*Contributed by* H. L. Ormsby, Esq.]

(i) GRENADA.

Ordinances passed—17.

Land Tax.—The Land and House Tax (Assessment) Ordinance, 1900 (No. 1 of 1900), provides for the appointment of a Land Tax Commissioner, imposes penalties of £50 on false declarations and £5 on false returns, regulates the making of returns, and assessment lists, the obtaining the attendance of persons liable to make returns, and imposes penalties of £50 on omission to make returns or answer questions put by the Commissioner, and £10 on persons appointed by the Commissioner for neglect of duty. The holding of assessment appeals annually by magistrates is also regulated. A deputy commissioner may be appointed.

Parochial Boards.—The Parochial Boards Ordinance, 1900 (No. 3 of 1900), provides for the creation of interregnum boards on failure to elect properly constituted boards; the Ordinance also repeals s. 65 of the Parochial Boards Ordinance, 1891, and gives power to the Governor in Council to make regulations as to (*a*) audit of accounts; (*b*) auditors' queries as to accounts; (*c*) procedure as to answering such queries; (*d*) prohibiting unauthorised expenditure; (*e*) other matters necessary for a business-like audit.

Bastards.—The Bastardy Ordinance, 1900 (No. 4 of 1900), enacts that if a bastard child be maintained at the public expense, any magistrate may order any payments under a maintenance order to be paid to the Treasurer. The Chief of Police may apply for a maintenance order in the case of bastards maintained at the public expense. Putative fathers are made liable for burial expenses of bastards dying under the age of twenty-one. The Governor in Council has power to make regulations for the purpose of the Ordinance.

Evidence.—The Prisoners' Evidence Ordinance, 1900 (No. 6 of 1900), enables prisoners and their wives and husbands to give evidence in the same way as in England.

Volunteers.—The Volunteer Ordinance, 1900 (No. 7 of 1900), enables the Governor to accept the services of a volunteer force of cavalry, artillery, and infantry, to organise and regulate the force, to appoint officers (who must be British subjects) and instructors. Volunteers are to take the oath of allegiance. Arms and appointments are to be as directed by the Governor. The Governor, with the consent of the Legislative Council, is to direct the amounts of capitation and other money allowances. Volunteers are to be enrolled for three years; police may not volunteer. Volunteers entering the police are to be struck off the roll. Annual inspections are to be held. The Governor may make regulations as to efficiency, disband the force, and

convene courts-martial and assemble courts of enquiry. The Governor may call out the force for actual military service in aid of the civil powers, or by reason of war. Volunteers on actual military service are to be paid as regular forces, or as ordered by the Governor in Council. Provision is to be made for the wives and families of those killed on actual military service. The Ordinance also provides for the discipline of the force on and not on actual military service, gives to the corps power to make rules subject to approval of the Governor, and protects the property, arms, etc., of corps; it also gives power to take lands for defence purposes, and regulates compensation therefor.

Merchant Shipping: Wreck.—The Wrecks Amendment Ordinance, 1900 (No. 8 of 1900), provides for enquiries and formal investigations in the case of shipping casualties, and reproduces (with modifications required by colonial circumstances) ss. 464–466, 469, 470, and 475 of the Imperial Merchant Shipping Act, 1894. The Ordinance also provides that wrecked goods are liable to import duty, and for the collection and assessment thereof.

Customs.—The Customs (Exportation) Ordinance of 1900 (No. 9 of 1900), provides for the refund of duty on exportation, and extends the power of the Governor in Council to prohibit exportation entirely or to allow it subject to regulations; it inflicts a penalty of £100 for illegal transhipment, and gives the Treasurer power to make regulations as to the packing of goods in bond with a view to exportation.

The Import Duties Amendment Ordinance of 1900 (No. 10 of 1900) imposes duties of 15*s.* per pound on opium, etc., 30*s.* per pound on extract of opium, and adds to the free list printing plant, machinery imported for development, etc., of any business belonging to the importer, and strikes out of the list personal luggage and apparel.

Census.—The Census Ordinance, 1901 (*sic*) (No. 11 of 1900), provides for the taking of a census on the first Sunday in April, 1901.

Marriage.—The Marriage Ordinance, 1900 (No. 12 of 1900), amends and consolidates the law of marriage. Marriages require the authority of a registrar's certificate, a marriage officer's certificate (*i.e.*, banns), or licence, except in the case where persons have been living in concubinage and one of them is *in articulo mortis*. Persons (except widowers and widows) under twenty-one years of age cannot marry without consent of the father or other guardian. In other respects the law appears to be identical with the law of England.

Courts of Justice.—The Windward Islands Court of Appeal (Amendment) Ordinance, 1900 (No. 13 of 1900), re-enacts the right of appeal to this Court from the Grenada Court except in interlocutory matters and in cases under £25. The Chief Justice of Tobago ceases to be a member of the Court.

Agriculture.—The Agricultural Interests Protection Ordinance, 1900

(No. 17 of 1900), comes into operation at a time to be fixed by the proclamation of the Governor, who may suspend the Act for want of funds. If all the unofficial members of the Legislative Council petition against the Ordinance, it is to be suspended for the directions of the Secretary of State for the Colonies.

The Ordinance provides for the erection of inspection grounds, for the appointment of Chief Inspector and inspectors, powers of search for and seizure of diseased plants, and those infested by insects, etc.; imposes on owners the duty of eradicating disease; directs that loans at four per cent. may be made to owners for the purposes of the Ordinance, and provides for their security and repayment. On default of the owners, inspectors may obtain a magistrate's order to enter and take necessary measures. When in the opinion of the Chief Inspector it is necessary that plants be destroyed, the owner shall be called upon to give an undertaking to do so; failure to carry out the undertaking is an offence against the Ordinance; if the owner refuses to undertake, the Chief Inspector reports to the Governor, under whose instructions the Chief Inspector may apply to the Chief Justice for an order authorising destruction. The Governor is authorised to make compensation in case of destruction. Offences against the Ordinance are punishable with a fine of £20. The Governor in Council may make regulations for the purposes of the Ordinance.

(ii) ST. LUCIA.

Ordinances passed—11.

Public Buildings.—The Public Buildings (Insurance) Ordinance, 1900 (No. 1 of 1900), provides that the Governor in Council, subject to the sanction of the Legislative Council, may set apart £300 a year to form an insurance fund for the public buildings.

Punishment.—The Regulation of Corporal Punishment Ordinance, 1900 (No. 2 of 1900), provides that where juvenile offenders are sentenced to whipping in lieu of other punishment, the Court may order their detention for not more than forty-eight hours before infliction of the punishment; not more than twelve strokes may be given at any one whipping.

Courts of Justice.—The Windward Islands Court of Appeal (Amendment) Ordinance, 1900 (No. 3 of 1900), gives a right of appeal from the Royal Court against any final judgment, except (*a*) where the Royal Court sits as Court of Appeal from District Courts; (*b*) in cases of opposition to marriage, where the judgment is in favour of marriage; (*c*) in cases under £25. The Ordinance also regulates the procedure on appeal.

Petroleum.—The Petroleum Ordinance, 1900 (No. 4 of 1900), prohibits the importation of petroleum with flash point under 95° Fahrenheit. Such petroleum in bond to be forfeited. Petroleum not for burning imported in glass bottles not exceeding twelve ounces is excepted. Regulations as to sale,

storage, etc., of petroleum are also contained in the Ordinance. The duties on licences are £3 for one year, £2 for six months, £1 for three months. No petroleum shall be kept in larger quantities than one hundred gallons, except in the Government petroleum warehouse, nor if for private consumption, than ten gallons, on penalty of £20.

Customs.—The Customs Ordinance, 1888, Amendment Ordinance, 1900 (No. 5 of 1900), gives to the Governor in Council power to prohibit the export and coastwise carriage of warlike stores.

The Customs Tariff Amendment Ordinance, 1900 (No. 7 of 1900), increases the duties contained in the first schedule to the Customs Tariff Ordinance, 1895, by fifteen per cent. (except in the case of coal), the Ordinance to continue in force till repealed by proclamation, but not beyond December 31st, 1900.

Census.—The Census Ordinance, 1900 (No. 10 of 1900), provides for the taking of a census on the first Sunday in April, 1901.

Schools.—The Agricultural Schools Ordinance, 1900 (No. 11 of 1900), is similar to the Dominican Ordinance No. 8 of 1900—see below: Leeward Islands, (iii) Dominica.

(iii) ST. VINCENT.

Ordinances passed—17.

Courts of Justice.—The Appeal Court Ordinance Amendment Ordinance, 1900 (No. 1 of 1900), restores the right of appeal from the Chief Justice to the Court of Appeal for the Windward Islands except in interlocutory matters and cases under £25, and regulates the procedure on appeal.

Merchant Shipping: Passengers—The Emigration Regulation Ordinance, 1900 (No. 2 of 1900), provides that only licensed persons may arrange for the conveyance of emigrants, under penalty of £20 fine or three months' imprisonment. The Governor in Council may make regulations for the purpose of the Ordinance.

Commission.—The Commissions of Enquiry Ordinance, 1900 (No. 3 of 1900), gives power to the Governor to issue commissions to enquire into matters of a public nature, to appoint fresh commissions; gives power to the commissioners to take evidence on oath, provides that false oaths shall be punishable as perjury, and provides for the expenses of witnesses, etc., and the payment of commissioners' secretary, etc.

Fire.—The Fire Enquiry Ordinance, 1894, Amendment Ordinance, 1900 (No. 5 of 1900), provides that the Governor may direct any magistrate to hold an enquiry in the case of fire, with power to summon, etc., witnesses, to administer oaths, to compel the answering of reasonable questions, and to adjourn.

Administration.—Ordinance No. 7 of 1900 enacts that on the death of any person to whom not exceeding £50 is due from Government for salary, etc., the Governor may pay the person entitled without administration.

Holiday.—The Bank Holidays Ordinance, 1900 (No. 8 of 1900), makes January 1st and 2nd, Easter Monday, Whit Monday, Corpus Christi Day, her Majesty's birthday, and the first Monday in August Bank holidays. If January 2nd or December 26th falls on Sunday, the next day is to be substituted.

Customs.—The Customs Duties Ordinance, 1900 (No. 17 of 1900) provides for ten per cent additional duty in addition to those set out in the table to s. 5 of Ordinance No. 2 of 1895 and in the schedule to No. 11 of 1895 during the year 1901.

10. LEEWARD ISLANDS.

[*Contributed by* H. L. Ormsby, Esq.]

(i) FEDERAL LEGISLATION.

Acts passed—7.

Post Office.—Act No. 1 of 1900 gives power to the Governor in Council to enter into agreements for the insurance of postal packets and parcels (s. 1), Act to be retrospective (s. 2).

Pensions.—Act. No. 2 of 1900 provides that the total emoluments of the Presidents of St. Christopher and Nevis, and Dominica shall be taken into account in calculating their pensions.

Land.—The Hurricane Loan Title by Registration Amendment Act, 1900 (No. 3 of 1900), defines "owner." All mortgages for the securing of advances for repair of sugar-works damaged by the hurricane of 1899 shall be valid notwithstanding anything in the Title by Registration Acts, etc., such mortgages to be registered notwithstanding any caveat, and to operate as a first charge in priority of all existing mortgages. Nothing in Act to give existing mortgagees, etc., any claim on the assurance funds created by the Title to Registration Acts.

Punishment.—The Wipping (*sic*) Act, 1900 (Act No. 4 of 1900), limits the number of strokes which a Court, or visiting magistrate, may order to twenty-four in case of persons over sixteen, and twelve in cases of those under that age, provided that where a less maximum number is fixed the strokes are not to exceed that number.

Constitution.—Act No. 7 of 1900 amends Act No. 2 of 1882 for the union of the presidencies of St. Christopher and Nevis.

The Legislative Council of St. Christopher and Nevis shall be composed of the Governor, Administrator, six official and six unofficial members (s. 3); Governor, Administrator, or senior member to preside and have original and casting vote (s. 4); official and unofficial members to be appointed by Crown (s. 5); one unofficial member at least to be chosen from Nevis (s. 6); members to take oath of allegiance (s. 7); quorum to be six besides person

presiding (s. 8); members becoming bankrupt, or absenting themselves for three months without leave, to vacate their seats (s. 9); Governor may appoint clerk to the council (s. 10); Council may amend its constitution (s. 11).

(ii) ANTIGUA.

Ordinances passed—18.

Public Health.—The Infectious Diseases (Notification) Ordinance, 1899, Amendment Ordinance, 1900 (No. 3 of 1900), gives power to the Governor by notice to require any medical officer to cease sending the certificate required by s. 2 (1) (c) of the principal Act to the local authority.

Vaccination.—Ordinance No. 4 of 1900 fixes the fee of the district medical officer for successful vaccination at one shilling.

Midwives.—Ordinance No. 6 of 1900 permits midwives duly licensed before the Medical and Poor Relief Ordinance, 1899, to continue to practise, Ordinance to be retrospective.

Treasury.—Ordinance No. 7 of 1900 amends Ordinance No. 7 of 1898, s. 5, as to salaries of Treasury officers.

Customs.—The Trade and Revenue Ordinance, 1900 (No. 8 of 1900), directs St. John's to be the port of entry, with power for Governor by Order in Council to declare other places to be ports of entry and to cancel such order (ss. 4 and 5); ss. 6 to 11 regulate inward and outward entry of cargo; ss. 12 to 22 the entry of goods; ss. 24 and 25 authorise exportation from out-bays, etc., and require a specification of outward goods to be delivered; s. 26 deals with landing and shipment of goods from steam vessels; ss. 27 to 40 deal with warehouses and warehoused goods; s. 41 directs forfeiture of vessels which have got rid of cargo unaccounted for; s. 42 imposes a penalty of £100 on persons engaged in smuggling; s. 43 a penalty of £10 for abusive language to officers; ss. 44 and 45 give power to examine carts, etc., and to search suspected persons; s. 46 (as amended by Ordinance No. 13) directs that all vessels, etc., used in removal of goods liable to forfeiture shall be forfeited; ss. 46 to 58 regulate forfeitures, penalities, indemnity to informers, and rewards to officers; s. 59 limits time for actions against officers to three months, and gives successful defendants double costs; ss. 60 to 65 deal with oaths, proof of legal importation, search for smuggled goods, penalties (£100) for false declarations, etc., and documentary evidence, and imposes £100 penalty where no penalty provided.

Income Tax.—The Income, Trade, and Professions Tax Ordinance, 1900 (No. 19 of 1900), imposes taxes on public officers' salaries and pensions of one and a half per cent. up to £150, and three per cent. above; on mercantile or hucksters' licences, first class, £20; second, £15; third, £10; fourth, £5; fifth £2 10*s.*; sixth, £1 5*s.*; hucksters' or pedlars', 5*s.*; professional, etc., licences, managers of estates (whose salaries are not under £100), £3; lessees of estates other than sugar estates, twenty acres and upwards, £3;

under twenty acres, £1; attorneys or receivers of estates, £2; medical practitioners, £5; barristers and solicitors, £5; banks not issuing notes, £50; auctioneers, £2; printers, £1; engineers with shops, £7 10*s.*; without, £8; veterinary surgeons, £5; bank managers, £10; business managers and clerks (under £100 exempt), £100 to £150, £1 10*s.*; over £150, £3; bakers in St. John's, first class, £3; second, £2; third, £1; elsewhere, 10*s.* The Ordinance also directs that trade and professional licence duties shall be paid in January and July, that deputies are to pay the taxes; persons shall not sell without a licence; licences only to apply to one establishment; persons carrying on professions, etc., without licence liable to £25 penalty; Treasurer may transfer licences, etc.

Land Tax.—The Land Tax Act, 1892, Amendment Ordinance, 1900 (No. 10 of 1900), fixes the land tax on land on which sugar-canes are grown at 2*s.* 6*d.* per acre; land cultivated in any other way, 1*s.* per acre; pasture or uncultivated lands, 6*d.* per acre.

Animal.—The Contagious Diseases (Animals) Ordinance, 1900 (No. 11 of 1900), provides for the appointment of an Inspector of Animals, empowers him to enter any premises, gives him power to do any act which may be required from any person on their default, to order incurable animals to be slaughtered, carcases of animals that die from, or are slaughtered in consequence of, disease to be burnt. The Ordinance also provides for disinfection, for the isolation of diseased stock, etc., £50 penalty for landing foreign stock in contravention, forfeiture of stock moved contrary to law, limitation of actions, power for Governor in Council to prohibit landing of stock, power for Governor in Council to make rules as to (*a*) duties, etc., of inspectors; (*b*) manner of dealing with diseased animals; (*c*) conditions of keeping animals for milk; (*d*) landing of foreign animals; (*e*) fees for examination of foreign animals; (*f*) notification of disease; (*g*) for purposes of Ordinance; £50 penalty for offences where none provided.

Botanical Gardens.—The Botanical Gardens Ordinance, 1900 (No. 12 of 1900), gives power to the Governor in Council to make rules for the Botanical Gardens.

Spirits.—The Excise Ordinance, 1900 (No. 16 of 1900), deals with officers and districts; spirits for Army or Navy or lost by evaporation, etc., exempt from duty; registration of stills, licensing of stills, Government control of stills, entry and inspection and approvement of stores, re-distillation, removal of spirits, storing of spirits, procedure, penalties and forfeiture of illegal spirits, false declarations, £100 penalty where none provided, power for Governor in Council to make regulations.

Revenue.—The Revenue in Aid Ordinance, 1898, Continuance Ordinance, 1900 (No. 17 of 1900), continues the Act referred to, and continues till December 31st, 1901, the additional duty of $33\frac{1}{3}$ per cent. under Acts No. 11 of 1896, No. 16 of 1897, No. 6 of 1898, and No. 28 of 1899.

Excise.—The Additional Rum Duty Continuance Ordinance, 1900 (No. 18 of 1900), continues the additional excise duty on rum imposed by the Rum Duty Act, 1892, up to December 31st, 1901.

(iii) DOMINICA.

Ordinances passed—8.

Taxes.—The Sugar Duty Abolition Ordinance, 1900 (No. 1 of 1900), abolishes the export duties on sugar, syrup, molasses, and rum.

Ordinance No. 3 of 1900 amends the Collection of Taxes Act, 1888, as to the sale of property seized under that Act.

Crown Lands.—The Mining Ordinance, 1900 (No. 5 of 1900), provides that the Governor may grant exploring leases, which shall empower lessee to search for minerals or oil on specified Crown lands, and also prospecting leases for same purpose; mining leases may also be granted over areas not exceeding five hundred acres, provided that the total area held by the lessee and those joint in interest with him shall not exceed one thousand acres, term of lease not to exceed thirty years. On prospecting and mining leases royalties are payable at these rates: coal, 5*s.* per ton; oil, 5*s.* per forty gallons or 5 per cent. on gross value; gold and silver, 20 per cent.; iron, 20 per cent.; other metals, 4*s.* 2*d.* per ton of ore exported; precious stones, 30 per cent. on net profits of each year; on prospecting leases the rent is not to exceed £5 per acre, on mining leases not above £1 per acre, and a dead rent fixed by Governor.

Customs.—The Trade and Revenue Act Amendment Ordinance, 1900 (No. 6 of 1900), amends the Trade and Revenue Act, 1894, in certain minor particulars, and gives power to the Treasurer to grant permits to vessels under thirty tons to import or export spirits and tobacco, and to direct that no proceedings be taken in smuggling cases where the goods are of less value than £5, or the duty does not exceed £1, on a sum not exceeding £1 or treble duty (whichever greater) being paid. Forfeiture of smuggled goods not affected.

Education.—The Agricultural Schools Ordinance, 1900 (No. 8 of 1900), provides for the establishment of agricultural schools on apprenticeship lines; Governor in Council may, in consultation with the Commissioner of Agriculture for the West Indies, make regulations as to (1) management of schools, admission, duration of course, discharge of pupils; (2) discipline; (3) maintenance, instruction, and employment; (4) sanitary care of pupils.

(iv) MONTSERRAT.

Ordinances passed—10.

Land Tax.—The Land and House Tax Ordinance, 1900 (No. 5 of 1900), fixes the rates of land tax at 1*s.* per acre on cultivated land, at 6*d.* per acre for five years, and then 1*s.* in the case of land devastated by the hurricane

of 1899 and since replanted with lime, orange, coffee, or cocoa; exempts lands in town of Plymouth and lands less than half-acre on which is a house paying house tax; tax on houses five per cent. on annual value. The Ordinance also contains provisions as to returns, assessments, etc., of the usual character.

Crown Lands.—The Mining Ordinance, 1900 (No. 7 of 1900), is similar to the Dominican Ordinance (*vide supra*).

Public Loans.—The Hurricane Loan Ordinance, 1900 (No. 9 of 1900), regulates loans by the Governor out of the £3,000 advanced by the Imperial Government to owners of estates injured by the hurricane of 1899; loans to be free of interest for three years and then to bear three per cent.

(v) ST. CHRISTOPHER AND NEVIS.

Ordinances passed—11.

Constitution.—Ordinance No. 1 of 1900 provides that the general Legislature of the Leeward Islands is competent to pass laws reconstituting the Legislative Council of the presidency so that the Council shall consist of Governor and Administrator and not less then twelve members—six official and six non-official.

Botanic Gardens.—The Botanic Gardens Regulation Ordinance, 1900 (No. 2 of 1900), authorises the Governor in Council to make regulations for the Botanic Gardens.

Crown Lands.—The Government Lands Regulation Ordinance, 1900 (No. 4 of 1900), vests Government lands in the Governor, and authorises the Governor in Council to make regulations as to sales, leases, etc., of such lands.

Harbours, Piers, etc.—The Public Piers and Wharves Consolidation Ordinance (No. 5 of 1900) consolidates the existing law and provides that wharfage dues (set out in a schedule) be paid, and enacts a set of rules for the control of piers, etc., giving the Inspector of Police in Basseterre, and elsewhere the pier-keepers, charge of bays and piers, and regulating coming along-side of vessels, landing of passengers and cargo, prevention of obstruction, and similar matters.

Customs.—The Additional Customs Tariff Ordinance, 1900 (No. 6 of 1900), fixes the following duties in place of those existing: ale, beer, etc., 2*s.* per dozen reputed quarts, or 7*d.* per gallon; brandy, 8*s.* per gallon; whiskey, 6*s.* 6*d.* per gallon; tea, 6*d.* per pound; tobacco leaf, if imported in packages not under 500 pounds, 11*d.*; manufactured tobacco, including snuff, 2*s.* 11*d.* per pound.

Telephone.—The Telephones Maintenance and Protection Ordinance, 1900 (No. 7 of 1900), provides for appointment by the Governor of a Telephone Board, which may sue and be sued; the Board to have control of the Government telephone system, and to have power to make rules

for efficiency, as to fees, and for securing payment, and for protection of plant; rules to be approved by Legislative Council and confirmed by Governor.

Defence.—The Defence Force Ordinance, 1899, Amendment Ordinance, 1900 (No. 8 of 1900), repeals the provision in the principal Act which made it come into force on proclamation. The Ordinance is retrospective.

Public Health.—The Bills of Health Regulation Ordinance, 1900 (No. 9 of 1900), is to come into force on proclamation that it is her Majesty's pleasure not to disallow the same; it provides for the appointment of a Health Officer with three deputies, all to be qualified medical practitioners. All bills of health are to be issued by these officers; power is given to the Governor to make regulations as to (1) issuing of bills of health; (2) fees; (3) for general purposes of Ordinance.

Rum Duty.—The Rum Duty Continuance Ordinance, 1900 (No. 10 of 1900), continues this duty till December 31st, 1901.

Customs.—The Additional Duties Continuance Ordinance, 1900 (No. 11 of 1900), continues the duties imposed by Ordinances No. 5 of 1896 and No. 1 of 1898 till December 31st, 1901.

(vi) VIRGIN ISLANDS.

Ordinances passed—8.[1]

Intoxicating Liquors.—The Liquor Licences Ordinance, 1900 (No. 6 of 1900), comes into operation on a day to be fixed by proclamation; fixes retail licences at £4; still owners must obtain a licence to sell rum in quantities of not less than one pint (£2 is the fee for this licence), licences to run for twelve months, and to be posted up; no sales on Sundays or before one o'clock on Christmas Day and Good Friday; £5 penalty for sales without licence.

Trespass.—Ordinance No. 7 of 1900 amends the Pound Ordinance, 1863, by providing that proprietors, etc., of plantations may shoot goats, swine, dogs, or feathered stock found trespassing; if stock killed is identified, person killing is to notify owner; £2 penalty in default. If not claimed, stock killed to belong to landowner.

[1] There are two Ordinances No. 1 of 1900.

X. MEDITERRANEAN COLONIES.

[*Contributed by* ALBERT GRAY, ESQ.]

1. CYPRUS.

Laws passed—19.

Police Force.—The power given by the Police Discipline Ordinance, 1878, to the Chief Commandant of Military Police to sentence men of his force to flogging is repealed (No. 1).

Village Roads.—The Law of 1899 for the maintenance and repair of village roads which we noticed last year is repealed, along with the preceding Law of 1896. The new consolidating Law (No. 6) lays down the obligation of every "able-bodied inhabitant" to contribute not exceeding six days' labour to the roads on being called out by the village authority. The able-bodied inhabitant may reduce his trouble by the vicarious employment of his horse or ox, each of which is reckoned to do as good a day's work as its owner. A donkey's day is only worth half his master's—to this extent Lord Bowen's legal maxim holds good, "Qui facit per asinum facit per se." The works intended to be carried out under the Law are the repair and maintenance of roads, the draining of standing water, and the cleansing of public drains, etc. Private property may be compulsorily acquired for the purpose of widening, straightening, and improving roads.

Drugs and Poisons.—Law No. 13, so far as it deals with the authorising of druggists, follows the normal lines; as to poisons, the regulation of their sale and possession is left to be dealt with by rules to be made by the High Commissioner.

Savings Bank.—The Government undertakes the establishment and management of a savings bank "for the safe custody and increase of small savings of the industrial classes of the island." The limit of deposit is £300.

2. GIBRALTAR.

Ordinances passed—4.

False Pretences.—A Justices Amendment Ordinance (No. 1) provides that where a Court of summary jurisdiction purposes to deal summarily with a charge of obtaining goods, etc., by false pretences, the Court shall, after the charge has been reduced to writing and read to the accused, "state in effect that a false pretence means a false representation by words, writing, or conduct that some fact exists or existed, and that a promise as to future conduct not intended to be kept is not by itself a false pretence," and may add any further explanation it may deem suitable to the circumstances.

Unsound Food.—The sanitary law of Gibraltar is further amended by powers of inspection and destruction of unsound food.

Shipping Casualities.—The sections of the existing Merchant Shipping Ordinance of Gibraltar are repealed, and a new law for wreck enquiries, formed on the Merchant Shipping Act, 1894, is substituted.

3. MALTA.

Ordinances passed—16.

Adulteration of Foods.—An importer of flour must either make a declaration that the flour does not contain more than five per cent. of foreign substances or file a certificate from the shipper stating what proportion of foreign substances it contains. Where no such information is given the Collector of Customs must cause the flour to be analysed (No. 3).

A series of regulations follows, dealing with bakeries, and imposing penalties for breaches. The following is a sample: "The grinding or trituration of talc, plaster of Paris, or other substances which are not cereals, suspected of being used in the adulteration or sophistication of flour, is not allowed in the same places or with the same appliances destined for the grinding or trituration of food stuffs."

Criminal Law.—A bulky amending Ordinance indicates the great particularity of the Maltese Penal Code. Offences are distinguished as crimes and contraventions, and punishments of imprisonment are graduated in thirteen classes. Thus we find punishment meted out in proportion to the damage done—*e.g.*, if the damage to property exceeds £100, hard labour or imprisonment from thirteen months to four years; if the damage does not exceed £100 but exceeds £10, ditto from five months to one year; if the damage does not exceed £10, but exceeds £3, imprisonment not exceeding six months; if the damage does not exceed £3, imprisonment not exceeding three months. In like manner "grievous bodily harm" is punished by scale with most ingenious particularity; deformities or disfigurements of the face, neck, or hands are a special category; permanent debility of health or of the functions of the body is another; there is a more severe punishment if death ensues within forty days than if it occurs after forty days; likewise more severe if the victim is a near relative of the offender, or if the assault is traced to evidence given at a trial.

Public Health.—The laws relating to the Public Health Department, the sanitary inspectors, quarantine officers, etc., are consolidated in Ordinance No. 14. We are glad to note a special chapter devoted to "veterinary assistance and supervision." This is given by a veterinary surgeon acting under the Superintendent of Health. His duties are to inspect all imported animals, to ascertain the causes of death and sickness amongst animals, and to inspect animals intended to be slaughtered. The Ordinance also constitutes a Medical Board, to whom is entrusted the duty of examining persons desiring to practise medicine, also the duty of regulating professional fees.

Post Office.—A long Ordinance consolidating the law relating to the Post Office does not call for special remark.

INDEX TO REVIEW OF LEGISLATION.

PAGE

ACCIDENTS: compensation to families of persons killed by (Western Australia) 369
——— ——— to workers (New Zealand) 344
——— inquests on (British Guiana) 412
——— miners, to, relief (New South Wales) 336
Acts of Parliament. *See* Statutes.
Administration of estates: intestates' property, devolution (North-West Territories) 398
——— ——— official administrator (British Columbia) 394
——— ——— sale in, validation of orders (New South Wales) . . 335
Adulteration: food, of (Malta) 433
——— wine, of (Victoria) 371–372
Agriculture: agricultural societies (Quebec) 404
——— ——— and pastoral societies (New Zealand) 340
——— Barbary shrub, prohibition against planting (Ontario) . . . 401
——— cold storage of fruits, dairy products, etc., associations for (Ontario) 400
——— compensation for improvements (United Kingdom, E.S.) . . . 281
——— ——— for injuries to workmen in agriculture (United Kingdom) . 283
——— crops, insurance against hail (North-West Territories) . . . 398
——— diseased plants, inspection and eradication of disease (Grenada) . 424
——— eucalyptus oil, distillation (South Australia) 361
——— fertilisers (South Australia) 360–361
——— foxes, destruction of (South Australia) 362
——— grain trade (Dominion of Canada) 392
——— live stock, registers of pure-bred (Dominion of Canada) . . . 392
——— noxious animals, rabbits (New South Wales) 335
——— ——— insects, destruction of (Ontario) 401
——— ——— weeds (New Zealand) 340
——— ——— ——— (Western Australia) 366
——— pastoral leases (Queensland) 352
——— pastures protection (New South Wales) 335
——— San Jose scale, treatment of (Ontario) 400
——— schools (Dominica) 429
——— ——— (St. Lucia) 425
——— seed wheat, repayment, time for (South Australia) 362
——— sugar cane, experiments as to (Queensland) 352
——— vermin, destruction of (South Australia) 362
Aliens: holding land (Newfoundland) 397
——— importation of destitute (Falkland Islands) 389

PAGE
Alimony, deserted wife, for (Barbados) 406
Animals: beavers, close time for (Newfoundland) 397
——— birds, protection of (Lagos) 385
——— ——— ——— (South Australia) 362
——— contagious diseases (Antigua) 428
——— cruelty, animals unfit for labour (Lower Provinces of Bengal) . . 316
——— ——— wild animals in captivity (United Kingdom, E.I.) . . 284
——— fish. *See* Fisheries.
——— foxes, close season for (Newfoundland) 397
——— ——— destruction of (South Australia) 362
——— game, licences to hunt or kill (Ontario) 401
——— ——— preservation of (Lagos) 345
——— ——— protection of, close season (New Zealand) 345
——— ——— wardens (Ontario) 401
——— infectious diseases, communication of (New South Wales) . . 333
——— kangaroos, killing of (Western Australia) 368
——— opossum, hunting of, forbidden (Tasmania) 364
——— rabbits, "noxious animals" (New South Wales) 335
——— trespassing, right to shoot (Virgin Islands) 431
——— wolf bounty (Ontario) 401
Antiquities: excavation (Ceylon) 321
Appeal, Court of: constitution and jurisdiction (Barbados) 408
——— criminal cases, in, procedure (Jamaica) 415
——— right of (Grenada) 423
——— ——— (St. Lucia) 424
——— ——— (St. Vincent) 425
Arbitration: generally (Jamaica) 417
——— industrial (Dominion of Canada) 391
——— ——— (New Zealand) 347
——— ——— (Western Australia) 367–368
Arms: carrying without licence (Hong-Kong) 327
——— exportation of (Cape of Good Hope) 376
——— ——— (Ceylon) 320
——— ——— (Gold Coast) 383
——— ——— (Lagos) 384
——— ——— (Queensland) 351
——— ——— (United Kingdom) 285
——— ——— (Victoria) 369
——— ——— (Western Australia) 367
——— importation of (Hong-Kong) 328
——— natives, permit to use (British New Guinea) 330
Army: electoral disabilities removal (United Kingdom) 285
——— militia (Bermuda) 410
——— training (Trinidad and Tobago) 420
Artillery and rifle ranges (Jamaica) 416
Art unions, immunity from lottery law (New South Wales) 333
Assessments, parish notification of ownership for (Bermuda) 409
Attachment of wages, limitation of (New South Wales) 333
Australia, Commonwealth of, Constitution Act (United Kingdom) . . 289–293
——— ——— election of representatives (Queensland) 350
Automobiles. *See* Motors.

PAGE

BAILIFFS, landlords' (Jamaica) 416
"Bakehouse" (Queensland) 353*n*
Bank holidays (St. Vincent) 426
——— ——— (Victoria) 369–370
——— half-holidays (New South Wales) 338
Bank, Shanghai and Hong-Kong (Hong-Kong) 327
Bankruptcy: Colonial Court to act in aid of administration in United Kingdom (Gambia) 380–381
——— consolidation of law (British Guiana) 413
——— local rates and taxes (Gambia) 381
——— offences (Straits Settlements) 325
——— Queensland Insolvency Acts, 1874, 1876, adoption of (British New Guinea) 330
Bastard: ability of mother to maintain (Barbados) 406
——— maintenance of (Grenada) 422
——— ——— order for (Victoria) 370–371
Beavers, close time for (Newfoundland) 397
Bills of sale, regulation of (Tasmania) 365
Birds: protection (Manitoba) 396
——— ——— (South Australia) 362
Births and deaths: illegitimacy, registration of father (Jamaica) 417
——— ——— registration of (Ceylon) 321
——— ——— ——— (South Australia) 357
Boilers, inspection of (North-West Territories) 398
——— ——— (Queensland) 353
Botanical Gardens (Antigua) 428
——— ——— (St. Christopher and Nevis) 430
"Brand," definition of (Southern Rhodesia) 378–379
Bread, sale of, by weight (British Guiana) 414
British South Africa Company, grant of lands by (Southern Rhodesia) . 379–380
Burial: burial grounds (United Kingdom, E.) 287–288
——— military (Cape of Good Hope) 376

CABLE, Pacific, co-operation in constructing (New South Wales) . . 336–337
——— ——— ——— ——— (Queensland) 351
Campbell's Act (Lord), adoption of (Western Australia) 369
Carriage by boats (Ceylon) 320
Cattle, branding of (Southern Rhodesia) 378–379
Census (Bahamas) 405
——— (Bermuda) 410
——— (British India) 313
——— (Cape of Good Hope) 376
——— (Ceylon) 320
——— (Fiji) 331–332
——— (Grenada) 423
——— (Natal) 377
——— (New South Wales) 337
——— (Queensland) 352
——— (St. Lucia) 425
——— (South Australia) 356
——— (Southern Rhodesia) 378

PAGE

Census (Trinidad and Tobago) 419
——— (United Kingdom, E.S.) 288–289
——— (Victoria) 370
Chancery, Court of, damages by, and fees (Prince Edward's Island) . . 402
Children: births, registration (South Australia) 357
——— employment of, in factories (Manitoba) 395–396
——— ——— ——— ——— (Queensland) 353
——— ——— ——— in mines (United Kingdom) 303
——— ill-usage, protection against (New South Wales) 337
——— industrial schools and foster homes (Ontario) 401
——— life, protection of infant (Queensland) 355
——— protection of girls and women (Southern Rhodesia) 379
——— ——— ——— ——— (Straits Settlements) . . . 322–323
——— punishment of (St. Lucia) 424
——— smoking by, suppression of (Tasmania) 364
——— State (South Australia) 357
Chinese: certificate fees (Hong-Kong) 327
——— immigration (Dominion of Canada) 391–392
——— ——— (Straits Settlements) 322
Christmas Island, administration of (Straits Settlements) 322
Civil Service: examinations (New Zealand) 343
——— pensions (British Honduras) 414
——— provident fund (Tasmania) 365
Coal tax (British Columbia) 395
Coast and harbour lights (Jamaica) 415
Coffee-stealing (Madras) 315
Coin: legal tender (British Guiana) 411
Cold storage of fruits, dairy products, etc., associations for (Ontario) . . 400
Colonial defence. *See* Defence.
Commissions, enquiry, of, into matters of public nature, power to issue (St. Lucia) 425
Commonwealth Act (Victoria) 369
Companies: art, science, religion, and charity, formed for, use of "limited" (Manitoba) 397
——— borrowing powers of (British Columbia) 393
——— branch registers (British India) 312
——— code of company law (North-West Territories) 398
——— death duties on holdings (New South Wales) 338
——— extra provincial, trading in Ontario (Ontario) 400
——— "limited," use of (Manitoba) 397
——— ——— ——— (Ontario) 399
——— liquidation of (British Guiana) 413
——— preference stock, purchase of its, by a company (Ontario) . . 399
——— prospectuses, directors, allotments, registration of mortgages (United Kingdom) 293–299
——— relief where contract for payment of shares not filed (New South Wales) 336
——— sureties, as (Quebec) 405
——— taxation (Quebec) 404
Compensation: accidents, to families of persons killed by (Western Australia) 369
——— ——— to workers, for (New Zealand) 344

PAGE
Compensation: accidents to workers (South Australia) 357
Concessions from natives (Gold Coast) 381–383
Conspiracy: protection of property "wilfully and maliciously" (Western Australia) 367
Constables, special (Gold Coast) 381
Constitution (Leeward Islands) 426–427
——— (St. Christopher and Nevis) 430
Consumptives, municipal sanatoria for (Ontario) 401
Contempt of Court (British Guiana) 413
Continuation Acts (Queensland) 356
Contracts: married women, by (Tasmania) 363
——— registration of (Southern Rhodesia) 378
Copyright: licence to reprint (Dominion of Canada) 391
Coroners: consolidation of law (Jamaica) 415
Corporal punishment (Trinidad and Tobago) 421
——— ——— cutting hair short in case of females (Trinidad and Tobago) 421
——— ——— gang rape (British India) 312–313
——— ——— number of strokes (Fiji) 332
——— ——— ——— ——— (Leeward Islands) 426
——— ——— ——— ——— (St. Lucia) 424
Corporations: commercial, taxation of (Quebec) 404
——— municipal. *See* Municipal Corporations.
Council of Legal Education (Ceylon) 319
County Courts: investment of money (United Kingdom, E.) . . . 298–299
Court of Appeal. *See* Appeal, Court of.
Courts of Justice. *See* Judicature.
Criminal Law: amendment (Dominion of Canada) 392
——— ——— ——— (Queensland) 351
——— ——— ——— (Western Australia) 369
——— appeals, procedure in (Jamaica) 415
——— bankruptcy offences (Straits Settlements) 325
——— brothels, suppression of (Southern Rhodesia) 379
——— coffee-stealing (Madras) 315
——— consolidation of law (New South Wales) 335–336
——— coroners (Jamaica) 415
——— cutting hair short in case of female (Trinidad and Tobago) . . 421
——— evidence (Bermuda) 409
——— ——— (British Guiana) 411
——— ——— of prisoner (Grenada) 422
——— false pretences (Gibraltar) 432
——— felonies and misdemeanours (New South Wales) . . . 335–336
——— gang rape, whipping for (British India) 312
——— incest, punishment for (New Zealand) 343
——— indecent publications (New South Wales) 332–333
——— "inquisition" into circumstances of crime (Lagos) 384
——— insults provocative of a breach of the peace (Sierra Leone) . . 386
——— penal code (Malta) 433
——— perjury (Lagos) 384
——— piracy, security by owners of steam launches (Hong-Kong) . 327–328
——— police magistrates (Barbados) 407
——— procedure (Barbados) 407

PAGE

Criminal procedure (Southern Nigeria) 387–388
——— ——— (Straits Settlements) 323–325
——— prostitution, living on proceeds of (Southern Rhodesia) . . . 379
——— Public Prosecutor (Straits Settlements) 324
——— stolen goods (Hong-Kong) 328
——— summary jurisdiction (Bermuda) 409
——— ——— ——— (Newfoundland) 397
——— ——— ——— (New Zealand) 342
——— ——— ——— (Sierra Leone) 385
——— verdict, need not be unanimous (Straits Settlements) . . . 323
——— whipping (St. Lucia) 424
——— ——— (Sierra Leone) 385, 386–387
——— ——— (Trinidad and Tobago) 421
——— ——— gang rape, for (British India) 312–313
——— ——— number of strokes, limit (Fiji) 332
——— ——— ——— ——— ——— (Leeward Islands) . . . 426
——— ——— ——— ——— ——— (St. Lucia) 424
——— women and girls, protection of (Southern Rhodesia) 379
Crown: demise of (Tasmania) 363
——— duty to, on profits made under concessions (Gold Coast) . . . 383
——— lands: exploring and mining leases (Dominica) 429
——— ——— ——— ——— ——— (Montserrat) 430
——— ——— resumption of (Hong-Kong) 328
——— ——— sale of (Tasmania) 363
——— ——— sales, leases, etc., of (St. Christopher and Nevis) . . 430
——— ——— spruce and pulp wood on (Ontario) 399
——— ——— title (Manitoba) 397
Cruelty to animals: animals unfit for labour (Lower Provinces of Bengal) . 316
——— ——— wild animals in captivity (United Kingdom, E.I.) . . 284
Currency: legal tender (British Guiana) 411
Customs duties: amendment (Barbados) 407
——— ——— ——— (Bermuda) 411
——— ——— ——— (Grenada) 423
——— ——— ——— (Fiji) 331
——— ——— ——— (New Zealand) 340
——— ——— ——— (St. Christopher and Nevis) 430–431
——— ——— ——— (St. Lucia) 426
——— ——— ——— (Sierra Leone) 386
——— ——— ——— (Southern Nigeria) 388–389
——— ——— coal (Gold Coast) 381
——— ——— live stock and frozen meat (Western Australia) . . . 366
——— ——— opium (Grenada) 423
——— ——— spirits and strong waters (Falkland Islands) . . . 389
——— proceedings before stipendiary justice, removal of (Trinidad and Tobago) 419
——— regulation of (Antigua) 427
——— sale of goods (Ceylon) 320–321
——— smuggling in small cases (Dominica) 429
——— warlike stores (St. Lucia) 425

Dealers in old metals, inspection of premises (Jamaica) 416

PAGE
Death duties, holdings in companies, on (New South Wales) 338
Debt, imprisonment for (New Zealand) 343
Deeds, registration of (Trinidad and Tobago) 419
Defence: cadet corps, formation of (Queensland) 351
——— commencement of Ordinance (St. Christopher and Nevis) . . 430
——— "Imperial reserve," creation of (New Zealand) 349
——— rifle associations (Tasmania) 364
Dentists: licensing (Southern Rhodesia) 379
——— registration of qualified (New South Wales) 336
Descent, rules of (Punjab) 317
Distillation (South Australia) 361
——— (Western Australia) 367
Districts (North-West Territories) 398–399
Dogs, licence for keeping (Sierra Leone) 386
——— taxation (Southern Rhodesia) 378
Drainage, land, of (South Australia) 362
——— ——— (Western Australia) 368
Drugs, sale of (Cyprus) 432
——— ——— (Lagos) 384
Drunkenness, notice by relatives to publicans not to serve drunkard (Quebec) 403
——— treatment of (New South Wales) 334
Duties. *See* Customs.

Ecclesiastical law: Church federation (Queensland) 356
Education: attendance (Queensland) 351
——— ——— management and (North-West Territories) 399
——— ——— penalties (United Kingdom) 299
——— boards, election (New Zealand) 341
——— elementary (British Guiana) 412
——— industrial schools and foster homes (Ontario) 401
——— Inspector-General of Schools (Bahamas) 405
——— legal, council of (Ceylon) 319
——— public schools, gymnastics (Ontario) 401
——— Royal College of Trinidad, regulations for (Trinidad and Tobago) . 420
——— sanitary arrangements in elementary schools (Barbados) . . . 408
——— schools of agriculture (Dominica) 429
——— ——— ——— (St. Lucia) 425
——— secondary (Queensland) 351
——— training of primary school teachers (Barbados) 408
——— University of Sydney (New South Wales) 333
Election: disabilities (military service) removal (United Kingdom) . . . 285
——— federal elections (New South Wales) 337
——— ——— ——— rules of state to apply to (Western Australia) . 366
——— illegal practice, canvassing (New Zealand) 346
——— Parliamentary and municipal, ballot (United Kingdom) . . . 306
——— regulation of (Dominion of Canada) 391
——— voting, counting of votes (Ontario) 399
——— ——— machines (British Columbia) 395
——— ——— ——— (Ontario) 400
——— ——— post, by (Victoria) 373–374
Emigration: licence necessary for conveyance of emigrants (St. Vincent) . 425

PAGE
Employment: bureau (Ontario) 399
——— children, of. *See* Children.
——— contracts for, in foreign country (Trinidad and Tobago) . . . 419
——— early closing (British Columbia) 394
——— ——— (New South Wales) 338
——— ——— (South Australia) 360
——— educational test (British Columbia) 393
——— factories, regulation and inspection of (Queensland) . . . 352–354
——— ——— ——— ——— ——— (South Australia) . . 358–360
——— Government, fair wages and working hours (New Zealand) . . 339
——— natives, of (British New Guinea) 329–330
——— wages. *See* Wages.
Ensign, institution of colonial (New Zealand) 350
Evidence: criminal law (Bermuda) 409
——— ——— (British Guiana) 411
——— documents, production of (New South Wales) 335
——— prisoners, by (Grenada) 422
——— witnesses, answers tending to criminate (British Columbia) . . 393
——— ——— consolidation of law relating to (New South Wales) . . 335
——— ——— parties to civil actions (British Columbia) 393
Excise: spirits (Antigua) 427–428, 429
——— rum (St. Christopher and Nevis) 431
Execution: wages, attachment of, limitation on (New South Wales) . . 333
Executors, powers and liabilities of (United Kingdom) 299–300
Explosives, storage of (Tasmania) 363
Exportation of arms. *See* Arms, Exportation of.

Factories, employment in (Manitoba) 395
——— registration and inspection of (Queensland) 352–354
——— regulation of (South Australia) 358–360
——— sanitation (South Australia) 360
False pretences (Gibraltar) 432
Federated Malay States 326
Fertilisers (South Australia) 360–361
Fetish land (Gold Coast) 383
Finance: customs duties (Queensland) 350
——— loans (Queensland) 350
Fire, enquiry into (St. Vincent) 425
——— insurance: Church of England mutual companies (Quebec) . . 404
Fisheries: encouragement by bounties (New Zealand) 343
——— explosives, prohibition of, for catching (Bahamas) 405
——— leases for fishing, licences and other regulations (Ontario) . . 401
——— overseers for (Ontario) 401
——— pearl (Sierra Leone) 385
Flogging, disciplinary, power of, in case of military police repealed (Cyprus). *See* Corporal punishment 432
Foreign country, contracts for employment in (Trinidad and Tobago) . . 419
——— mining companies, conditions of immigration (Quebec) . . . 404
Forest fires, prevention of (Ontario) 400
Foxes, close season for (Newfoundland) 397
——— destruction of (South Australia) 362

PAGE
Friendly societies (New South Wales) 338

GAME: preservation (Lagos) 385
——— protection of, close season (Manitoba) 396
——— ——— ——— ——— (New Zealand) 345
——— ——— ——— ——— (Ontario) 401
Gang rape, whipping for (British India) 312
Goldfields: miners' homestead leases (Western Australia) 368
Goods, sale of. *See* Sale of Goods.
Government: contracts, fair wages and working hours (New Zealand) . . 339
——— ministers, salaries (New Zealand) 340
——— offices, hours in (Prince Edward's Island) 402
Guano, removal of (Western Pacific) 375
Guarantee companies as sureties (Quebec) 405
——— fund for public officers (Straits Settlements) 325

HACKNEY carriages, licences for (Barbados) 409
Hail, insurance of crops against (North-West Territories) 398
Harbours: foreign transports, control of soldiers and sailors (Straits Settlements) 323
——— land for, grants of, by Crown (Queensland) 352
——— lights (Jamaica) 415
——— piers and, consolidation of law (St. Christopher and Nevis) . . 430
——— Table Bay, improvement of (Cape of Good Hope) 376
Health: adulteration, food, of (Malta) 433
——— ——— wine, of (Victoria) 371–372
——— Board of Health (Queensland) 354
——— bubonic plague, prevention of (New Zealand) 339
——— bye-laws, summary proceedings for breaking (Hong-Kong) . . 327
——— consolidation of law (Malta) 433
——— consumptives, municipal sanatoria for (Ontario) 401
——— elementary schools, sanitation in (Barbados) 408
——— expenses, chargeability (United Kingdom, I.) 302
——— factories, sanitation (Queensland) 353
——— health officer, appointment of (St. Christopher and Nevis) . . 431
——— infectious diseases, notification of (Antigua) 427
——— "native" (British New Guinea) 331
——— noxious microbes (New South Wales) 333
——— nuisances (Queensland) 355
——— plague, bubonic, prevention (New Zealand) 339
——— ——— scheduled among infectious diseases (Barbados) . . 408
——— public health (New Zealand) 343
——— quarantine (Barbados) 407
——— Queensland Health Act, 1884, adoption of (British New Guinea) . 331
——— shops, sanitary condition of work buildings (Ontario) 400
——— slaughter-houses, inspection (New Zealand) 343–344
——— small towns (Ceylon) 320
——— unsound meat (Gibraltar) 432
——— vaccination, compulsory (Burma) 317
——— ——— fee for (Antigua) 427
——— ——— supply of pure vaccine (Quebec) 403

PAGE

Health: veterinary assistance and supervision (Malta) 433
——— wells, covering (Southern Rhodesia) 378–379
Highway: consolidation of law as to (Barbados) 409
——— traction engines, injury by (Victoria) 372
——— village roads (Cyprus) 432
Hurricane loan (Barbados) 406
——— ——— (Leeward Islands) 426
——— ——— (Montserrat) 430
Husband and wife: married woman. *See* Married Woman.

ILLEGITIMACY: registration of father (Jamaica). *See* Bastard 417
Immigration: Chinese (Dominion of Canada) 391–392
——— ——— (Straits Settlements) 322
——— Indian (British Guiana) 412
——— ——— (Natal) 377
——— return passages, costs of (British Guiana) 412
——— tests (British Columbia) 393
Imperial defence: "imperial reserve," creation of (New Zealand). *See* Defence 349
Importation of destitute aliens (Falkland Islands) 389
Imprisonment for debt (New Zealand) 343
Incest (New Zealand) 343
Income tax (Antigua) 427–428
——— (New Zealand) 346
Indecent publications (New South Wales) 332–333
Indemnity: martial law, for acts done during existence of (Cape of Good Hope) . 375–376
——— ——— ——— ——— ——— ——— (Natal) . . . 378
Indian immigration (Natal) 377
Industrial conciliation and arbitration (Dominion of Canada) 391
——— ——— ——— ——— (New Zealand) 347
——— ——— ——— ——— (Western Australia) . . . 367–368
——— schools, private (New Zealand) 349
Inebriates, treatment of (New South Wales) 334
Innkeepers: licence (Quebec) 403
——— lien on goods of guest (Manitoba) 396
Inquests on accidents (British Guiana) 412
Insolvency (British Guiana) 413
——— (British New Guinea) 330
Insults provocative of a breach of the peace (Sierra Leone) 386
Insurance: fire, Church of England mutual companies (Quebec) . . . 404
——— hail, against (North-West Territories) 398
——— valuation of policies by official inspector (Quebec) 405
Interest, judgments, on (New South Wales) 333
Interpretation, acts of (Falkland Islands) 389
——— ——— (Jamaica) 415
——— ——— (North-West Territories) 398
——— ——— (South Australia) 356
——— ——— (Tasmania) 363
——— proclamations, of (Southern Nigeria) 387
Interpreters, native, classification (New Zealand) 340
Intestates' estates, devolution of (North-West Territories) 398

PAGE

Intoxicating liquors: licences, forfeiture of, for harbouring drunken or disorderly persons (Barbados) 408
——— ——— ——— refusal of (United Kingdom, I.) 300
——— ——— ——— regulations as to (Bermuda) 410
——— ——— ——— ——— ——— (British Columbia) . 393–394
——— ——— ——— ——— ——— (British New Guinea) . . 330
——— ——— ——— ——— ——— (Manitoba) 396
——— ——— ——— ——— ——— (Quebec) 403
——— ——— ——— ——— ——— (Virgin Islands) . . . 431
——— ——— natives, prohibited to (British New Guinea) . . . 330
——— ——— sale or barter of, prohibited (Prince Edward's Island) . 402
——— ——— ——— ——— ——— (Southern Nigeria) . . 388
——— ——— restrictions on (Hong-Kong) 327
——— ——— treatment of inebriates (United Kingdom) 300
Introduction to Legislation 278–280

JÁGIRS, descent of (Punjab) 317
Jinrikishas, regulation of (Straits Settlements) 321–322
Judges, appointments of, validation of (Trinidad and Tobago) 420
Judgment: interest on (New South Wales) 333
——— payment of English, out of inscribed stock (New South Wales) . 337
——— registration of (British Columbia) 393
Judicature (Queensland) 350–351
——— amendments of Judicature Act (Manitoba) 397
——— Chief Court for Lower Burma, establishment of (British India) . . 313
——— civil Courts (Bombay) 316
——— civil jurisdiction (British Guiana) 413
——— jurisdiction, territorial (Ceylon) 320
——— justices, procedure before (New South Wales) 337
——— Supreme and Circuit Courts, consolidation of law (New South Wales) 335
——— ——— Court, establishment of (Southern Nigeria) . . . 387
——— ——— ——— procedure (New South Wales) 337
——— trial of civil actions (Jamaica) 416
Jurors (British Columbia) 395
——— (Fiji) 332
Juvenile smoking, suppression of (Tasmania) 364

KANGAROOS, killing of (Western Australia) 368

LABOUR. *See* Employment.
Land: alienation (British India) 313–314
——— consolidation of Acts relating to (New South Wales) . . 333–334
——— Court, new territories, for (Hong-Kong) 327
——— Crown lands: exploring and mining leases (Dominica) . . . 429
——— ——— ——— ——— ——— (Montserrat) 430
——— ——— resumption of (Hong-Kong) 328
——— ——— sale of (Tasmania) 363–364
——— ——— sales, leases, etc. (St. Christopher and Nevis) . . . 430
——— ——— spruce and pulp wood on (Ontario) 399
——— ——— title (Manitoba) 397

PAGE
Land: drainage (South Australia) 362
——— ——— (Western Australia) 368
——— fetish (Gold Coast) 383
——— grants (Southern Rhodesia) 379–380
——— Maori lands administration (New Zealand) 349
——— mortgages (British India) 314
——— notice of ownership for parish assessments (Bermuda) . . . 409
——— preservation (Punjab) 316–317
——— registry, identification of judgment debtors (British Columbia) . . 393
——— ——— new buildings (United Kingdom, E.) 300–301
——— revenues, succession to (Punjab) 317
——— settlements, for, consolidation (New Zealand) 349
——— tax (Antigua) 428
——— ——— (Grenada) 422
——— ——— (Montserrat) 429–430
——— ——— (New South Wales) 334
——— ——— (New Zealand) 346
——— tenants' improvements (Madras) 315
——— unimproved value, rating (New Zealand) 341
——— valuation, Government (New Zealand) 341
——— waste (Ceylon) 320
——— ——— (Western Pacific) 375
Landlords' bailiffs (Jamaica) 416
Law officers (Lagos) 384
Legal education, council of (Ceylon) 319
Legislation, improvement in modes of 310–311
Legislative Council (Hong-Kong) 327
Leper Asylum, Malay States (Straits Settlements) 322
Licence: auctioneers, pawnbrokers, billiard-tables, etc., for (Quebec) . . 403
——— billiard-room keepers, commission agents, solicitors, etc., for (British Honduras) 414
——— dog, for keeping (Sierra Leone) 386
——— liquor (British Columbia). *See* Intoxicating Liquors . . . 393–394
——— public conveyances (Barbados) 409
——— soap, manufacture of (Jamaica) 416
——— tobacco, to manufacture (Jamaica) 417
——— trade and professional (Antigua) 427–428
Lights, coast and harbour (Jamaica) 415
Liquors. *See* Intoxicating Liquors.
Loans: Colonial Loans Act (Lagos) 384
——— ——— ——— (Trinidad and Tobago) 420
——— local government. *See* Local Government.
——— loan societies (British Columbia) 392
——— ——— ——— (Ontario) 400
Local government: Aden settlement regulation (India) 319
——— ——— Chittagong Hill Tracts regulation (India) 317
——— ——— county councils, elections (United Kingdom, E.) . . . 301
——— ——— ——— ——— London, qualification (United Kingdom, E.) 302–303
——— ——— ——— surveyors (United Kingdom, I.) 302
——— ——— dogs, keeping of (Southern Rhodesia) 378

PAGE

Local government: health. *See* Health.
——— ——— irrigation works (South Australia) 362–363
——— ——— loans (New Zealand) 342
——— ——— ——— (Queensland) 356
——— ——— local boards (Madras) 315
——— ——— municipalities. *See* Municipalities.
——— ——— parochial boards (Grenada) 422
——— ——— public health (United Kingdom, I.). *See* Health . . 302
——— ——— sea pier (Natal) 377
——— ——— town councils (United Kingdom, S.) 301
——— ——— ——— police (Jamaica) 416
——— ——— tramways (Natal) 377
——— ——— water supply (Natal) 377
London: County Council franchise (United Kingdom, E.) . . . 302–303
Lord's Day Acts (Queensland) 354*n*
Lotteries: Art Union, immunity (New South Wales) 333
Lunatics: committee, public trustee as (New Zealand) 339

MACHINERY: fencing of, in factories (Queensland) 353
——— ——— ——— (South Australia) 359
——— inspection (New Zealand) 342
Mails. *See* Post Office.
Maoris, councils of (New Zealand) 346
——— lands administration (New Zealand) 349
——— representation of, in House of Representatives (New Zealand) . . 345
Marine Board, constitution of (Jamaica) 417
Marriage: consolidation of law (Grenada) 423
——— deceased husband's brother, legalisation of, with (New Zealand) 349–350
——— illegitimate child, maintenance (Victoria) 370
——— registration of marriages (Ceylon) 321
——— solemnisation by irregularly appointed Assistant Commissioner (Turk's and Caicos Islands) 418
——— ——— by person not a minister (British Honduras) . . . 414
Married woman: contracts by, to bind separate property (Tasmania) . . 363
——— ——— desertion by husband, order for alimony (Barbados) . . 406
——— ——— separate property (Manitoba) 396
——— ——— slander of, imputation of unchastity (Lagos) . . . 384
——— ——— ——— ——— ——— (Western Australia) . . 368
Medical practitioners: unqualified practitioners (British Guiana) . . . 413
——— ——— ——— ——— ——— (New South Wales) . 334–335
Merchant shipping: deck loads (Dominion of Canada) 392
——— ——— wrecks, enquiry into (Grenada) 423
Metals, dealers in old, inspection of premises (Jamaica) 416
Midwives, licensed, permission to practise (Antigua) 427
Military forces (Trinidad and Tobago) 420
Militia, embodiment of, in case of imminent national danger (Bermuda) . . 410
Mines: accidents in, relief (New South Wales) 336
——— child labour in (United Kingdom) 303
——— concessions for mining (Gold Coast) 381
——— directors of, jointly and severally liable for wages (Quebec) . . 404
——— exploration and mining leases (Dominica) 429

PAGE

Mines: exploration, right of (Montserrat) 430
——— ——— ——— (South Australia) 361
——— goldfields, grant of miners' homestead leases (Western Australia) . 368
——— licence fee in lieu of royalty (Ontario) 399
——— mining claims (New Zealand) 349
——— ——— companies, exploration by (Quebec) 404
——— ——— partnerships, limitation of (New South Wales) . . . 333
——— regulation of (Ontario) 399
——— ——— (Tasmania) 364–365
Money-lending, regulation of (United Kingdom) 303–305
Monuments, ancient, preservation of (United Kingdom) 305–306
Mortgages: costs of mortgagee (British Columbia) 394
——— land, of (British India) 314
Motors, regulation of (Tasmania) 364
Municipalities: consolidation of Acts (New Zealand) 347
——— ——— ——— ——— (Western Australia) 366
——— Darjeeling (Lower Provinces of Bengal) 316
——— hospital accommodation (Straits Settlements) 322
——— municipal councils (Ceylon) 321
——— organisation of (North-West Provinces and Oudh) 316
——— Punjab (Punjab) 317
——— sanitary conditions (British Columbia) 394
——— water, acquisition of (British Columbia) 395

Natives, concessions from (Gold Coast) 381
——— employment of (British New Guinea) 329
——— intoxicating liquors (British New Guinea) 330
——— Maoris (New Zealand) 345, 346, 349
——— "native" (British New Guinea) 331
——— native chiefs, administration by (India) 317
——— passenger traffic (Western Pacific) 374
——— protection of, in dealing with whites (Southern Nigeria) . . . 387
Naturalisation (Falkland Islands) 389
Navy: electoral disabilities removal (United Kingdom) 285
——— reserves, calling out (United Kingdom) 286
Negri Sembilan (Federated Malay States) 326
New Kowloon (Hong-Kong) 328
Newspapers: registration of title and name of proprietor (Barbados) . . 406
Noxious insects: destruction (Ontario) 401
——— microbes (New South Wales) 333
——— weeds (New Zealand) 340
——— ——— (Western Australia) 366

Oaths, affirmations in lieu of (British Honduras) 414
——— ——— ——— (Lagos) 384
——— consolidation of law relating to (New South Wales) 333
Old-age pensions (New South Wales) 337–338
——— ——— (New Zealand) 343
Opium: possession of, without permit (British New Guinea) 330
——— raw, particulars required from vessel carrying (Hong-Kong) . . 328
——— standard of quality (Straits Settlements) 322

PAGE
Opossum, hunting of, forbidden (Tasmania) 364

Pacific Cable (New South Wales) 336–337
——— ——— (Queensland) 351
Pahang (Federated Malay States) 326
Paper, pulp wood for, on Crown lands (Ontario) 399
Parliament: elections to. *See* Elections.
——— membership (Tasmania) 363
——— ——— (Western Australia) 366
——— payment of members (Western Australia) 368
——— representation of Maoris (New Zealand) 345
Parochial Boards (Grenada) 422
Partition, consolidation of law relating to (New South Wales) 333
Partnership: codification of (British Guiana) 412
Patents (Gold Coast) 381
——— (Southern Nigeria) 388
——— registry, establishment of (Trinidad and Tobago) 420
Pearl fishery (Sierra Leone) 385
Pensions: age for retirement (Barbados) 407
——— calculation of (Leeward Islands) 426
——— civil service (British Honduras) 414
——— old-age. *See* Old-Age Pensions.
——— scheme of, for public service (Trinidad and Tobago) . . . 421
——— widows' and orphans' fund (Ceylon) 319
——— ——— ——— ——— (Hong Kong) 327–328
Perak (Federated Malay States) 326
Petroleum, importation of inflammable, prohibited (St. Lucia) . . . 424–425
Pilotage, amendment of law as to (British Honduras) 414
——— exemption of foreign national ship (Bermuda) 410
——— ——— of transient vessels (Turk's and Caicos Islands) . . . 418
Piracy: security from steam-launch owners (Hong-Kong) . . . 327–328
Plague: bubonic, prevention (New Zealand) 339
——— infectious diseases, scheduled among (Barbados) 408
Poisons, sale of (British Guiana) 412
——— ——— (Cyprus) 432
——— ——— (Lagos) 384–385
——— ——— (New Zealand) 343
Police constables (Barbados) 409
——— magistrates (Barbados) 407
——— military, power to flog repealed (Cyprus) 432
——— regulation (Hong-Kong) 328
——— towns (Jamaica) 416
Poor Law: removal (United Kingdom, I.) 306
Post, voting by (Victoria) 373–374
Post office: betting letters (New Zealand) 342
——— carriage of letters by railway companies (Western Australia) . . 368
——— consolidating Act (Bermuda) 410
——— ——— ——— (Hong-Kong) 327
——— ——— ——— (Malta) 433
——— insufficiently stamped letters (Hong-Kong) 326
——— insurance of postal packets and parcels (Leeward Islands) . . 426

PAGE
Post office: savings banks (Western Australia) 366
——— seizure of lottery letters (Straits Settlements) 322
Printing: notice of press to be given (Tasmania) 363
Prisons, establishment and regulation of (Trinidad and Tobago) . . . 421
——— prisoners, consolidation of law (British India) 312
——— ——— power to interchange (Southern Nigeria) 387
——— ——— working of, outside (Sierra Leone) 386–387
Proclamations, printing of (Southern Nigeria) 387
Property, transfer of (British India) 312
Prostitution, living on proceeds of (Southern Rhodesia) 379
Public accounts, date for making up (Trinidad and Tobago) 421
——— buildings, doors opening outwards (Quebec) 404
——— ——— insurance of (St. Lucia) 424
——— conveyances, licences for (Barbados) 409
——— moneys, application of (Bahamas) 405–406
——— offices, guarantee fund (Straits Settlements) 325
——— ——— hours for (Prince Edward's Island) 402
——— prosecutor (Straits Settlements) 324
——— schools, gymnastics (Ontario) 401
——— service: classification of officers (South Australia) 357
——— ——— pensions. *See* Pensions.
——— ——— servants, appointment and removal (Western Australia) . 368
——— ——— ——— retirement (Trinidad and Tobago) . 420–421
——— watering-places, protection of (New South Wales) 333
——— works, aid to (New Zealand) 349
——— ——— consolidation of law relating to (New South Wales) . . 334
——— ——— department of, creation of (North West Territories) . . 398
——— ——— loans for (Gold Coast) 381
——— ——— ——— (United Kingdom) 301
——— ——— ——— (Western Australia) 367
Pulp wood, Crown lands, on (Ontario) 399
Punishment. *See* Criminal Law, and Corporal Punishment.

QUARANTINE: periods of disease incubation (Barbados) 407
——— ——— ——— ——— (British Honduras) 414
Queen's Counsel, restriction of number of (British Columbia) 394

RABBITS, "noxious animal" (New South Wales) 335
Railways: accidents, prevention of (United Kingdom) 306–307
——— acquisition and extension of (Cape of Good Hope) 376
——— authorisation (New Zealand) 350
——— Government (New Zealand) 343
——— Minister of (New Zealand) 340
——— Singapore and Johore Railway (Straits Settlements) 322
——— subsidies (Dominion of Canada) 390
——— tax on earnings (Manitoba) 397
Real property. *See* Land.
Registration, birth, of (Jamaica). *See* Births and Deaths, Registration of . 417
——— deeds, of (Trinidad and Tobago) 419
——— dentists, of (New South Wales) 336
——— land, of. *See* Land, Registry.

PAGE

Registration: marriages, of (Ceylon) 321
——— newspapers, of (Barbados) 406
Revenue (Antigua) 428
——— collection of: searches (Quebec) 403
——— Finance Act (United Kingdom) 307–309
Rifle ranges (Jamaica) 416

Salaries: Chief Justice of Bahamas (Bahamas) 405
——— Governor of Straits Settlements (Straits Settlements) . . . 322
——— payment of, by Government to representative of deceased public servant without administration (St. Lucia) 425
——— Speaker of House of Assembly (Bahamas) 406
——— Treasury officers, of (Antigua) 427
Sale: administration, in, validation of orders (New South Wales) . . . 335
——— goods, of, delivery or writing (Manitoba) 396
Savings bank, Government (Cyprus) 432
——— ——— manager, appointment of (Trinidad and Tobago) . . 421
——— ——— Post Office (Western Australia) 366
——— ——— rate of interest (Barbados) 408
——— ——— ——— ——— (Trinidad and Tobago) 421
Schools. *See* Education.
Seamen, lodging-houses for (British Guiana) 411–412
Selangor (Federated Malay States) 326
Settlements, land for, consolidation of Acts (New Zealand) 349
——— settled estates (North-West Provinces and Oudh) 316
Sheriff, consolidation of law relating to (New South Wales) 333
Shipping: casualties (Gibraltar) 433
——— ——— (Gold Coast). *See* Wrecks 381
——— coast and harbour lights (Jamaica) 415
——— dues, exemption of transient vessels from certain (Turk's and Caicos Islands) 418
——— limitation of shipowners' liability (United Kingdom) 309
——— Marine Board, constitution of (Jamaica) 417
——— merchant. *See* Merchant Shipping.
——— pilotage, exemption of foreign national ships (Bermuda) . . . 410
——— wrecks (Gold Coast) 381
Shops: early closing (British Columbia) 394
——— ——— (South Australia) 360
——— ——— poll in country districts (New South Wales) . . . 338
——— sanitary condition of work buildings (Ontario) 400
Short titles to Acts (Bermuda) 410
Shorthand reporters, appointment of official (New Zealand) 340
Slander of women: imputation of unchastity (Lagos) 384
——— ——— ——— ——— ——— (Western Australia) . . 368
Slaughter-houses, inspection of (New Zealand) 343–344
Smoking, juveniles, by, suppression of (Tasmania) 364
——— within prohibited limits (Hong-Kong) 328
Soap, duty on (Jamaica) 416
South African war: contingent, military, towards (British Columbia) . . 392
——— ——— ——— ——— ——— (Dominion of Canada) . . 390
——— ——— ——— ——— ——— (Tasmania) 364

PAGE
South African war: contingent, military, towards (Victoria) . . . 372–373
——— ——— ——— naval (Victoria) 369
——— ——— indemnity for acts done during existence of martial law (Cape of Good Hope) 375
——— ——— military service of police (Victoria) 370
Special constables (Gold Coast) 381
Spirituous liquors, sale or barter of, prohibited (Southern Nigeria) . . . 388
Stamp duties (Barbados) 406
Statutes: consolidation (New South Wales) 332
——— interpretation of (South Australia) 356
——— ——— (Tasmania) 363
——— revision of (Hong-Kong) 329
——— ——— (Lagos) 385
——— ——— (Trinidad and Tobago) 420
——— short titles (Bermuda) 410
Steamship service, subsidy towards (Jamaica) 417–418
Stock, inscribed, payment of English judgment out of (New South Wales) . 337
Stolen goods, receiving (Hong-Kong) 328
Subsidy, direct steamship service (Jamaica) 417–418
Succession duty: joint property, appointable property, fraudulent dispositions, etc. (Jamaica). 415
——— ——— recovery of, by action (British Columbia) . . . 394–395
Sugar cane, experiments as to (Queensland) 352
Summary jurisdiction. *See* Criminal Law.
Supply (British New Guinea) 330
——— (Cape of Good Hope). 375
——— (Falkland Islands) 389
——— (Fiji) 331
——— (Manitoba) 396
——— (Natal) 377
——— (Newfoundland) 397
——— (New Zealand) 339
——— (North-West Territories) 398
——— (Prince Edward's Island) 402
——— (Queensland) 350
——— (Southern Rhodesia) 379
——— (Straits Settlements) 323
——— (Tasmania). 363
——— (Western Australia) 366
Surety, guarantee company as (Quebec) 405
Surveyor, Institute of (New Zealand) 349

TARIFF. *See* Customs.
Taxation: assessment (British Columbia) 395
——— coal tax (British Columbia) 395
——— corporations (Manitoba) 396–397
——— ——— (Quebec) 404
——— dogs (Sierra Leone) 386
——— ——— (Southern Rhodesia) 378
——— house tax (Sierra Leone) 386
——— income (New Zealand) 346

PAGE

Taxation: insurance, banks, and other companies (Prince Edward's Island) . 402
——— land (Grenada) 422
——— ——— (Montserrat) 429–430
——— ——— (New South Wales) 334
——— ——— (New Zealand) 346
——— ——— (South Australia) 356
——— succession duty. *See* Succession Duty.
——— sugar cane, rum, spirits, etc. (British Guiana) 411
——— ——— duty, abolition (Dominica) 429
Telephones, maintenance and protection of (St. Christopher and Nevis) . 430–431
Tenants' improvements (Madras) 315
Theatres, doors to open outwards (Quebec) 404
Tobacco, licence to manufacture (Jamaica) 417
Towns, police (Jamaica) 416
Traction engines, regulation of (Victoria) 372
Trade marks (Gold Coast). 381
——— ——— (New South Wales) 333
——— ——— (Southern Nigeria) 388
——— ——— registry of, establishment of (Trinidad and Tobago) . . 420
——— unions: conspiracy (Western Australia) 367
Tramways (Queensland) 356
Transfer of property (British India) 312
Treason, trials for, expediting (Natal) 377–378
Treaties: French (Manitoba) 397
——— Great Britain and United States, between, as to trade with Bermuda (Bermuda) 409
Trespass, animals, by: right to shoot (Virgin Islands) 431
Truck Act (New South Wales) 337
Trust funds, investment in colonial Government securities (New Zealand) . 340
——— ——— ——— ——— ——— (Western Australia) . 366–367
Trustees, consolidation of law relating to (Western Australia) 367
——— liability, relief (British Columbia) 395

Unchastity, imputation of, to women (Western Australia) 368
University of Sydney (New South Wales). 333

Vaccination, compulsory (Burma) 317
——— fee for (Antigua) 427
——— supply of pure vaccine (Quebec). 403
Verdict, need not be unanimons (Straits Settlements) 323
Vermin: destruction of (South Australia) 362
Veterinary surgeons: disciplinary Act (United Kingdom). 309
Villages (North-West Territories) 398
——— roads, obligation to labour on (Cyprus) 432
Volunteers: calling out (United Kingdom) 286
——— electoral disabilities removal (United Kingdom) 285
——— land for (United Kingdom) 286–287
——— recovery of subscriptions and fines (Bermuda) 410
——— use of, by Government, and regulation (Grenada) . . . 422–423
Voting: counting votes (Ontario) 399
——— machines (British Columbia) 395

PAGE

Voting: machines (Ontario) 400
——— post, by (Victoria) 373

WAGES, attachment of, limitation on (New South Wales) 333
——— factory, in, minimum (South Australia) 359
——— Government contracts, fair wages (New Zealand) 339
——— Truck Act (New South Wales) 337
Waste lands (Ceylon) 320
——— (Western Pacific) 375
Water, acquisition of, by municipal corporations (British Columbia) . . 395
——— conservation (South Australia) 361–362
——— irrigation works (South Australia) 362–363
Weights and measures (Dominion of Canada) 392
——— ——— (New Zealand) 340
——— ——— (Sierra Leone) 386
Whipping (St. Lucia) 424
——— (Sierra Leone) 385, 386–387
——— (Trinidad and Tobago) 421
——— gang rape, for (British India) 312
——— number of strokes, limit of (Leeward Islands) 426
Will, family maintenance (New Zealand) 342
Wine, adulteration (Victoria) 371–372
Witnesses. *See* Evidence.
Wolf bounty (Ontario) 401
Women and girls, protection of (Southern Rhodesia) 379
——— ——— ——— (Straits Settlement) 322–323
Working hours, factories and shops, in (Queensland) 354
——— ——— Government contracts (New Zealand) 339
——— ——— ——— offices, in (Prince Edward's Island) . . . 402
——— ——— shops, in (British Columbia) 394
——— ——— ——— (New South Wales) 338
——— ——— ——— (South Australia) 360
——— men, compensation for accidents (New Zealand) 344
——— ——— ——— ——— (South Australia) 357–358
——— ——— dwellings, local authority, power to establish lodging-houses outside district (United Kingdom) . . 309–310
——— ——— industrial arbitration (New Zealand) 347–349
Wrecks (Gibraltar) 433
——— (Grenada) 423
——— (Gold Coast) 381

NOTES.

The Final Court of Appeal for the Empire.—No one acquainted with English methods ever imagined probably that the ideal Court of Appeal for the whole Empire would rise, perfect in form, from the sea of controversy that surrounds the subject. So far from disappointment, there is cause for satisfaction at the consensus of opinion as to the needed reforms in the Judicial Committee which the Conference has evoked. Stated shortly, the points agreed to were as follows: That (1) appeals should continue to lie from the colonies and from India to his Majesty in Council; that (2) appointments to the Judicial Committee should be from time to time made in such numbers as may be considered necessary from one or more of the following: The Dominion of Canada and Newfoundland, the Commonwealth of Australia, New Zealand, South Africa, the Crown colonies, and India; that (3) a member should vacate any judicial office which he may be holding at the time of his appointment; that (4) the selection of members should not be restricted to judges and ex-judges; that (5) every member should be appointed for life or for a term of years, preferably not less than fifteen; that (6) a suitable salary should be paid; that (7) a larger attendance at the sittings of the Committee should be secured. From all which we may gather that the present system of appeals to the Privy Council gives satisfaction in India and the colonies, and that it merely requires to be supplemented by a few judicious reforms calculated to add strength and dignity to the tribunal. The cardinal point in the above recommendations—next, of course, to securing the services of the ablest and most experienced jurists that the Empire can furnish—is the resignation by an appointee of any office which he holds at the time. It is only thus that appointees can become real working members of the Board. It was a happy inspiration on Lord Rosebery's part to confer Privy Councillorships on the Chief Justices of Canada, Cape Colony, and Australia; but it was quite impossible that Sir Samuel Strong, Sir Henry de Villiers, or Sir Samuel Way could, compatibly with the retention of high judicial office in their respective colonies, render effectual aid to the Judicial Committee. It is an obvious corollary of such a change that a proper salary should be attached to the appointment. Permanency of tenure and the inclusion of persons other than judges and ex-judges are lesser but not unimportant suggestions; so is the securing a larger attendance at the

sittings. Two or three judges, however able and learned, cannot give the weight that is wanted for such a tribunal.

Pauper Litigants.—For any person to have a legal claim which he cannot enforce for want of means would be a reproach to the administration of justice; but there are a number of people of sanguine temperament or ill-balanced minds who cherish imaginary legal grievances, or if they have some sort of legal claim put it too high—persons also with whom the love of litigation, once indulged, grows to a disease. To furnish these with the means of litigating would be a waste of the time of the Courts as well as injustice to the other parties to the litigation. Hence the need of circumspection before letting loose the pauper litigant, and of some guarantee that the claims he raises have substance in them, and that the plea of poverty is genuine. Mr. Coldstream, in his instructive paper read on this subject at the summer meeting of the International Law Society, details the various methods adopted among civilised nations to help the pauper to his rights and at the same time safeguard such help from being abused.

In France there is a highly organised system. Special bureaux are established, in connection with the various Courts, composed of (1) the Director de l'Enregistrement et des Domaines; (2) a delegate of the Préfet; and (3) three members either retired *avocats* or *notaires*. This bureau investigates the matter, and among other things gives notice to the other party in order that he may appear to contest the poverty, and also give explanations *sur le fond* the subject of dispute, and so enable the bureau to get to the bottom of it.

In Germany the judge of any Court can in his discretion grant the right, but formal testimony given on magisterial authority must be lodged as to the place where the petitioner resides, his trade, property, family, and circumstances.

In Scotland none can be admitted to what is called the "poor's roll," or roll of persons allowed to litigate *in formâ pauperis*, until he produces a certificate from the minister and two elders of the parish in which he resides setting forth his circumstances. On receiving this certificate of poverty the pauper's law agent presents a petition to one of the divisions of the Supreme Court of Appeal to be admitted to the poor's roll and craves a remit to a special tribunal called the Reporters on the *Probabilis causa litigandi*, and composed of two advocates, a writer to the signet and one solicitor. Objection may at this stage be taken to the petition. If the tribunal reports favourably, the petitioner is placed on the roll.

Switzerland, Belgium, Austria, and the Netherlands have analogous systems. In Switzerland the system is combined with the defence of poor prisoners. Our English system—signature of counsel and an affidavit of no means—is the most rudimentary of all.

Closely connected with the pauper litigant is the "Poor Man's Lawyer"

movement. Denmark led the way long ago in this matter, and Edinburgh has now established a very successful "Legal Dispensary." A similar experiment is being tried by Mansfield College, Oxford, at the Mansfield Settlement, and from the number of cases considered—between two thousand and three thousand in the year—is evidently ministering to a popular need.

Licence for Defamatory Libel in New Zealand.—We are indebted to Mr. Montfort Trimble of Wellington, New Zealand, for the following note of an awkward situation which has arisen there as the result of codification *per incuriam*: "In 1893 the Criminal Code Act, was passed, codifying the law of crimes. It makes no reference to the law of defamatory libel, though it deals with seditious libel, blasphemous libel, and libel on a foreign sovereign. S. 4 is as follows: 'This Act shall apply to all offences for which the offender is liable to be proceeded against and tried within the colony.' S. 6 is as follows: 'Every one who is a party to any crime or misdemeanour shall be proceeded against under some provision of this Act, or under some provision of some Statute not inconsistent therewith and not repealed, and shall not be proceeded against at Common Law." The English Act 6 and 7 Vict., c. 96 (Lord Campbell's Act), was made applicable to New Zealand by Ordinance of 1845, and has never been repealed.

"Defendant was indicted at Criminal Sessions in Wellington for publishing a defamatory libel. The indictment did not aver that he published the libel knowing it to be false. The presiding judge quashed the indictment on the ground that it disclosed no offence that could be tried in New Zealand. The question now raised before the Court of Appeal was whether a person can in New Zealand be indicted for ordinary defamatory libel (*Rex* v. *Mabin*, July 3rd, 1901). The Court unanimously decided that as since 1893 the Common Law has not been operative, and as the offence referred to in s. 5 of Lord Campbell's Act is a Common Law misdemeanour, and not a statutory offence (*Reg.* v. *Munslow*, LR. 1895, 1 Q.B. 758), the question must be answered in the negative. The following are some extracts from the judgments:—

Stout C.J.:

> The code provides that there shall be no prosecutions in New Zealand for what would have been offences at Common Law. The question is, therefore, is this indictment under Lord Campbell's Act? The effect of that Statute has been judicially determined in the case of *The Queen* v. *Munslow* (1895, Q.B. 758), and unless the Court is prepared to overrule the reasons given for the decision in that case by a strong Court—viz., Lord Russell of Killowen C.J., Pollock B., and Wills, Charles, and Lawrence JJ.—defamatory libel is not an offence created by Lord Campbell's Act. . . . The code was meant to be a code; reliance was not hereafter to be had on the Common Law. There must be some Statute produced declaring an offence before an inhabitant of New Zealand could be charged with a crime. The code has provided for three kinds of libel: for seditious libel, for libel on foreign princes or sovereigns, and for blasphemous

libel. Other libels have been left out. Why? It is impossible to ascertain the minds of the Legislature. Before the code was enacted, in 1884 a full Bench of Common Law judges (*Queen* v. *Labouchere*, 12 Q.B.D. 320) had held that for ordinary libels the Criminal Law should not be invoked. . . . Seeing the wide meaning given to seditious libel in s. 101 of the code, it may well be that Parliament meant to enact what Lord Coleridge [in that case] held was the law, and that mere personal libels, not necessarily affecting the public peace, should not be criminally prosecuted; but, if so, there are libels which may affect the public peace, such as wanton attacks on private character, that cannot be criminally prosecuted. . . . Aid cannot be obtained in the interpretation of a Statute from the parliamentary history of the law. If such could be invoked, it would, I think, appear clear that many Common Law offences, including the crime of defamatory libel, were meant to be abolished: see original code, report of Commission on same, and report of Commission on Statutes Revision on code. In my opinion ordinary defamatory libel was not before our code a statutory offence, but a Common Law offence; and this being so, it is no longer a crime in New Zealand, and the indictment was properly quashed.

The following is the judgment of Williams J. :—

I regret that I see no escape from the logical difficulty presented by the words of the Statute, nor from holding, with his Honour the Chief Justice, that a defamatory libel is no longer indictable in New Zealand, unless it is alleged and proved that the publisher of the libel published it knowing it to be false. The result is eminently unsatisfactory. The difficulty of proving actual knowledge of the falsity of the libel is obvious. A man who is not worth suing civilly will be at liberty to publish the vilest calumnies against men or women, and will go entirely unscathed, unless it can be proved that he actually knew that his statements were false. Such a state of things does not, I believe, exist in any civilised country. Nor, looking at the interests of the public peace, is it desirable that it should continue to exist.

The rest of the Court concurred, Edwards J. saying :—

I agree also that it is to be regretted that the offence mentioned in s. 5 of Lord Campbell's Act can now be committed in this colony with impunity.

The Pseudo Medical Book. —"I deny not," says Milton in the *Areopagitica*, "but it is of the greatest concernment in the Church and the Commonwealth to have a vigilant eye how bookes demean themselves as well as men, and thereafter to confine, imprison, and do sharpest justice on them as malefactors; and yet unless warinesse be used, as good almost kill a man as kill a good booke: who kills a man kills a reasonable creature, God's image, but hee who destroys a good booke kills reason itself, kills the image of God, as it were, in the eye. Many a man lives a burden to the earth, but a good booke is the precious life-blood of a master spirit imbalm'd and treasured up on purpose to a life beyond life."

Last year the Legislature of New South Wales passed a drastic Act dealing with the whole subject of indecent publications, but in striking at a public mischief the Legislature was not unmindful of Milton's noble protest, and introduced an exception in favour of the "*bonâ fide* medical

work." But what is a "*bonâ fide* medical work"? This was what the Supreme Court of New South Wales had to decide in *Ex parte Rummans* (1901, 1 State Reports N.S.W. 63), on an information under the above Act. Cohen J. defined a *bonâ fide* medical work as a work the exclusive or substantial purpose of which is to give scientific medical information, even though the author derives a profit from his work. Stephen J. was of opinion that it was *bonâ fide* if published with the main object of giving the writer's experience for the benefit of medical science to help practitioners in their practice and to instruct students. Simpson J.'s opinion was to the like effect, but all were agreed in holding without hesitation that the particular book in question was not a *bonâ fide* medical work. The "cloven foot" of self-advertisement showed itself only too plainly in pages of self-laudation, pictures of the author's place of business, and directions as to sending fees.

"*Bonâ fide*" is not, perhaps, a very felicitous epithet for use in an Act of Parliament, but it goes to the root of the matter—science or charlatanry.

Mr. Bryce's Studies: Primitive Iceland.—English lawyers are so accustomed to "wandering about"—to use the figurative language of Lord Bacon—"in the mists and valleys" of petty professional interests that it is a luxury to win the vantage ground of volumes like these with their wide survey. The studies deal with a variety of topics—"The Methods of Legal Science," "The Extension of Roman and English Law Throughout the World," "Flexible and Rigid Constitutions," "The Laws of Nature," "Primitive Iceland," "Methods of Law-making in Rome and England," "The Constitution of the Commonwealth of Australia," to mention only some; but through this diversity there runs a unity of aim: to emphasise the importance—too much overlooked—of the constitutional and legal element in history. This is well exemplified in the study entitled "Primitive Iceland." Explorers tell us that they sometimes come across an island in remote seas with fauna and flora all its own. Iceland seems to have grown up in a similar manner untouched by the influence of other constitutions. A curious and strangely interesting picture it is which Mr. Bryce give us of this Ultima Thule, with its little groups of inhabitants scattered along the edges of a barren desert interior of glaciers, precipices, and morasses, its wild blood feuds, its piracy and plunderings, yet united through it all by its judicial "Alping" (one of the oldest national assemblies in the world)—a folk court presided over by the "Law-say-Man," or speaker of the law, whose duty it was to recite aloud each year the whole of the Common Law of the island, to rehearse the formulas of actions, and to answer all questions which might be put as to the provisions of the law. So far, indeed, from the State in Iceland creating the law, it was the law which created the State—that is to say, such State organisation as existed came into being for the sake of deciding law suits. Oddly enough, the proceedings of the Court of Alping ended with the decision of the case: there was no direct sanction; but public opinion created a sanction which amounted to

outlawry against the contumacious ; and in an isolated community this seems to have been enough even for this (as Herrick would call it) "wild amphibious race."

The Comparative Method in Law.—Essay xii. contains an analysis of "The Methods of Legal Science"—the metaphysical, analytical, historical, and comparative; all of them, so Mr. Bryce thinks, still legitimate methods and capable of being applied in a truly scientific spirit. Of the four, the historical has given us "the best crop." Certainly it has revivified, as in the vision of Ezekiel, the dry bones of history : they stand up a great army. But does not the comparative method, rightly understood, comprehend the historical, and in a larger, more philosophic, sense?—for this comparative method is really, as Mr. Bryce observes, "an historical study of law in general," tracing the growth of law in different countries and comparing its successive stages, its various phases and developments. This is its theoretical side, and it is only from this source that we can look for a true science of law. Its practical side is in ascertaining how different nations like the United States, France, Germany, Italy, Belgium, and our own colonies deal with the common problems of modern life, such as the treatment of inebriates, the reformation of prisoners, gambling, municipal trading, the enterprise of joint stock companies. The experience and the legislative experiments of such countries must needs have a high value for the legislator as well as for the jurist and the law teacher. Mr. Bryce admits it, but he passes by the legislator with the remark that "legislators, whether monarchs or members of legislative assemblies, have in modern countries seldom sought to acquire any specifically legal knowledge." But if it be so, what an anomaly, what a topic for Socratic irony ! "Oh ! reform it altogether," one may exclaim with Hamlet.

The Taint of Immoral Consideration.—"Honeste vivere" was one of the precepts of Roman law, as it must be a precept of all systems of law among civilised nations so long as that law has a moral basis. But when it comes to applying the maxim to a particular set of facts on the borderland of law and morals, there is often a difficulty. For instance, the law will not enforce contracts founded on immoral considerations. But how far is the taint of such consideration to extend? The Supreme Court of Quebec has lately had before it (*Bruneau* v. *Laliberté*, 19 Rapp. Jud. de Quebec 425) a question whether a contract of insurance upon the furniture of a house of ill fame is one which the law will enforce or not. "We have," says Mr. Justice Andrew in giving judgment in the case, "a decision of our own Courts that a lease of such premises is void, and will not be enforced by the Court. That decision is to be found reported in 7 L.C.J. 127 in the case of *Garish* v. *Duval* decided by the late Judge Bruneau, and is in entire conformity with the law and jurisprudence of England, of France, and of the United States. I have gone carefully into the authorities cited, and have examined others, and there is no question in all of these

countries that the decision is the same as that given by Judge Bruneau. The lease would be declared to be a contract which would not be in any way recognised by the Courts. The question then comes to be whether a contract of insurance upon the furniture of such a house should be treated in the same way as a contract of the lease of the house itself;" and Mr. Justice Andrews comes to the conclusion that it should—that it is void as being "auxiliary" to or in aid of the keeping of such a house within the meaning of Beach on *Contract*, p. 2019. But must not the expression be understood of a contract auxiliary or ancillary to the carrying on of the particular business *as such*, not to ordinary contracts or contracts merely collateral, like a policy of fire insurance? Otherwise are not the inmates of such a house civilly outlawed and liable to perish for lack of the necessaries of life? The distinction is illustrated in some English cases on the subject: *Lloyd* v. *Johnson* (1 Bos. & P. 340; 4 R.R. 822), *Bowry* v. *Bennet* (1 Camp. 348; 10 R.R. 697), and *Pearce* v. *Brooks* (L.R. 1 Ex. 212).

The Representation of the Crown Colonies.—The case for the representation of the Crown colonies on the Judicial Committee was well stated by Mr. Walter Napier, a member of the Legislative Council of the Straits Settlements. The Crown colonies and the Empire would both benefit by such a representation: the Crown colonies, because the prospect of a well-paid seat on the most dignified tribunal in the world would greatly enhance the attractiveness of the colonial Bench; the Empire, because the Crown colony judges, by the range and variety of their judicial experience, their acquaintance with different systems of laws, are specially qualified to assist the deliberations of the Judicial Committee. "He"—to wit the Crown colony judge—"may start," says Mr. Napier, "in Singapore or Hong-Kong, where English law is administered; he may go to Ceylon, where you find Roman-Dutch law; he may then go on to Mauritius, where you find French law. I have in my mind one instance of a judge now sitting on the Bench of one of the colonies who has had experience in two of the colonies, of English law; in another, of French and English law; in another, of Spanish and French law; and in another of Roman-Dutch Law. Well, I venture to doubt if judicial experience of that kind could be obtained anywhere outside the service of the Crown colonies. But not only, I think, has he the advantage of a knowledge of divers systems of law, he has also the training which contact with the various races who come before him brings to his point of view. Thus, in the colonies I have mentioned, a judge gets experience of Chinese, Malays, Sinhalese, Tamils, and others which I venture to think will not be possessed by any other judge who will have a seat on that Court." True, the questions which come before the Crown colony judge are not always profound. It may be, as the Attorney-General remarked, the right of two rival chiefs to an umbrella or a stool, or a custom as to the killing of wild beasts in a forest; their experience may be somewhat mixed too:

a little Roman-Dutch law here, a little gold or other mining law there, a dip into the Turkish system of land tenure perhaps; but all these things, slight though they be, serve to widen a judge's legal horizon and familiarise him with the principles of jurisprudence at work in different stages of national developement and under different social and climatic conditions. Hence the philosophic-legal mind which, more than any encyclopædic knowledge of legal systems, is wanted to solve the problems which come before the Judicial Committee.

Naturalisation: Suggested Amendments of the Law.—Adverting to these Mr. E. L. de Hart sends us the following note: "The Report of the Inter-Departmental Committee on the law of naturalisation contains a number of important recommendations; some made for the purpose of removing doubts as to the actual state of the law, others suggesting amendments thereof. The Committee found it advisable to go beyond the strict limits of their warrant of appointment, in order to deal with some questions of the law of nationality which do not arise under the Naturalisation Acts. Thus they point out that some uncertainty may exist as to the status of persons born on ships of one State in the ports or territorial waters of another State. For instance, there is no actual decision on the question whether British nationality is gained merely by birth on a British ship in foreign waters. Possibly the person so born may, under the present law, be a British subject or an alien, according as the ship was or was not within the Admiralty jurisdiction. The Committee think that the law should be declared. They favour the simple rule that a person born on a British ship in foreign waters should be a British subject, and are of opinion that a person born on board a foreign ship should not be deemed to be a British subject merely because the ship was, at the time of his birth, in British waters.

"At present, by Statute, a person born abroad, whose father or paternal grandfather was at Common Law a natural-born subject (or, according to the statement of the law in the Report, whose father or paternal grandfather was born within the dominions of the Crown), is himself a natural-born subject. The Royal Commission of 1869 considered it desirable to limit the privilege of British nationality to the first generation born abroad, and the Committee think that this recommendation should be acted upon. They also advise that this privilege should be extended to the children, born abroad, of naturalised subjects, who under the Naturalisation Act of 1870 do not become British subjects until they come to reside with the parent in the United Kingdom. As regards the conditions under which a certificate of naturalisation is granted, the Committee are of opinion that a declaration of an intention to reside in the British dominion should take the place of that, now exacted, of an intention to remain in the United Kingdom. They further recommend that there should be power to revoke a certificate obtained by a false statement as to the applicant's period of

residence, or a fraudulent one as to his intention to remain in the King's dominions. The question has been considered by them, whether a widow who has lost her British nationality by marrying an alien should be allowed to resume it without, as at present, having resided for five years in the kingdom. The Committee recommend that there should be no relaxation of the existing rule in her favour; but they point out that cases of hardship sometimes occur when the woman has her home in the Kingdom, and her sons, being minors, wish to enter the service of the Crown. To meet such cases they suggest that the Secretary of State should for special reasons have power to grant to a minor a certificate of naturalisation, without fulfilment of the usual conditions. No doubt the mother does not lose much by remaining an alien for five years; but if the condition of residence is to be relaxed, there is something to be said for the view that the certificate should be granted to the head of the family for herself and all her infant children. There is a doubt whether the British children of a widow become aliens under s. 10 (3) of the Act of 1870, if by reason of her marriage to an alien, and their residence with her in the State to which her second husband belongs, they become naturalised there. The majority of the Commissioners recommend that the marriage of a British widow with an alien should not affect the status of her children by her former husband.

"The most interesting feature of the report is the Commissioners' recommendation with regard to colonial naturalisation. Such naturalisation has now no legal effect outside the colony in which it was granted. The Commission approve of the scheme of 'Imperial naturalisation' which has already been mooted—the scheme under which the status of a British subject, recognised everywhere by British law, could be obtained by persons who fulfilled the required conditions in any part of the British dominions."

International Law Conference at Glasgow.—We are indebted for the following note to Mr. G. G. Phillimore: "The twentieth Conference held by the International Law Association at Glasgow in August last may fairly claim to have done something to further the object for which that body was founded, namely, the 'reform and codification of the law of nations.' In Public International Law the subjects of main importance were the proposals to frame a recognised international code of the duties of neutral States in war and to obtain the conclusion of compulsory international arbitration treaties between particular nations on the lines of the proposed Anglo-American treaty of 1897, which was brought up by a proposal by Dr. Barclay in favour of a similar treaty between Great Britain and France. Objection was taken to the latter proposal on the ground that it might interfere with the scope and authority of the general international system and tribunal set up by the Hague Convention in 1899: but this was met by showing that the latter system is only voluntary, while the other would be compulsory, and they are both directed to the same object—viz., the peaceful judicial settlement of international disputes. In Private Inter-

national Law the discussion on a proposal by Mr. Justice Phillimore for a uniform procedure in marriage by making the only necessary ceremony a civil one, performed by a civil officer and registered in a civil register, showed a balance of opinion in favour of uniform civil registration only; and in addition to the strong feeling in certain countries in favour of religious marriages—*e.g.*, in Scotland, and, it may be added, Servia and Bulgaria, where they are the only legal ones—it may be noticed that our own last marriage Statute (1898, 61 & 62 Vict., s. 8) points the same way by dispensing with the presence of a civil officer at marriages in Nonconformist places of worship, subject to the proper preliminaries having been gone through with the civil officer, and to the ceremony itself containing the simple form of marriage contract specified in the Act, and to its being performed and registered by a person authorised by the persons having control of the building. Another reform advocated —the substitution of the law of nationality for that of domicil in determining the capacity of the parties to contract marriage, as is the rule in France, Germany, and Belgium—will no doubt require future consideration.

"In Comparative Law, papers on several important subjects were considered: 'The Treatment of Habitual Drunkards' (a subject treated already, so far as England and the Colonies are concerned, in a paper in this journal, No. 5 N.S., August, 1900), by Mr. R. W. Lee (Oxford); 'Pauper Litigants, or Assistance Judiciaire,' by Mr. J. P. Coldstream (Edinburgh), who urged that England should become a party to the Hague Private International Law Convention of 1896 (to which almost all the Continental Powers were parties), which allowed the same privileges in each State to subjects of the other States as to its own, and in his comparison of the various systems pointed out that the Scottish and French ones have the advantage over the others of having a standing body or bureau to which application must be made in order to obtain this privilege: and 'Taking Evidence of Witnesses Resident in Foreign Countries,' by Dr. Hindenburg (Copenhagen), who advocated the adoption of the system prevailing between Norway and Denmark, by which, avoiding the expense of a commission and the circuity of letters of request which must go through diplomatic channels, the Courts of one country will examine witnesses resident within its jurisdiction on being satisfied that their evidence is required in a cause pending in the other. Other subjects dealt with by papers were the Execution of Foreign Judgments, Trading with the Enemy, Curators of Foreign Lunatics in English Courts, and the Relations of French to Scottish Law.

"The chief (practical it is to be hoped) result of the Conference was, however, the adoption of the Glasgow Marine Insurance Rules of 1901, a code drafted in the first place by Mr. T. G. Carver, K.C., and amended in the light of criticisms from English, American, Belgian, French, and German experts in marine insurance law. The effect of the rules on the present

national systems, if adopted in practice, stated briefly is as follows: (1) As regards constructive total loss, the Continental standard of 75 per cent. loss to the ship or cargo insured is adopted, instead of the American one of 50 per cent. or the English one of 100 per cent; (2) as regards seaworthiness of ship in voyage policies, the present absolute warranty in our law is replaced by a qualified warranty of having taken all reasonable care to secure seaworthiness, breach of which only prevents the assured recovering for losses proximately caused thereby, and the underwriter being liable for latent defects: and in a policy on cargo the present warranty of seaworthiness of ship is abolished; (3) in cases of double insurance the English and American rule of making all the policies rateably liable in case of loss is adopted, instead of the Continental system making the loss fall on each policy in order of date. Two serious gaps in the completeness of the scheme are (1) the non-application of the above rules as to seaworthiness to the case of time policies, the result of which is to continue the difference between the English law implying no warranty of seaworthiness of ship and the American law implying such a warranty as in voyage policies; and (2) the non-adoption of the English and American principle of the rights of the parties being decided by the 'proximate cause' of loss, the result of which is that by English and American law loss proximately caused by a peril insured against, though contributed to by the negligence of the assured or his servants, is recoverable by him, while by Continental law such negligence will preclude him from recovering it. Subsequent consideration and practical experience of the working of the rules may, it is to be hoped, supplement these deficiencies."

Notes from Germany: English Insurance Companies in Germany—Copyright and Publishing Contracts.—The following note from Mr. E. Schuster is of interest: "The directors of English insurance companies doing business in Germany have been much agitated by the German Statute of May 12th, 1901, relating to private insurance offices, under which all foreign companies must form a separate premium reserve in respect of all outstanding and future life policies issued by their German agencies, which will have to be invested in German trustee securities and be under the control of the New Imperial Board of Supervision, for the exclusive benefit of German policy-holders. The Board of Supervision have, in addition to this, wide powers of interference in respect of the methods of calculating risks, tables of mortality, etc., and may in case of disobedience impose fines, order the discontinuance of further business, and take such measures for the protection of German policy-holders as they think fit. In most cases it will be questionable whether English directors may consistently with the articles of association of their companies and the rights of their non-German policy-holders submit to regulations for the exclusive protection of their German customers, and they are therefore under the painful dilemma of having either to abandon a

lucrative branch of their business or to run the risk of personal liability for applying the insurance funds in an unauthorised manner.

"The German Statutes as to copyright and publishing contracts, the drafts of which have caused considerable discussion in German literary and publishing circles, became law on June 19th, 1901. The Copyright Statute deals with the same matters as the Imperial Act of 1870 which it supersedes—literary, dramatic, and musical copyright, and copyright in scientific drawings and models—and contains many important changes. Foreign authors are protected within certain limits independently of the Berne Convention and other international arrangements.

"The Statute as to publishing contracts introduces legislation of a completely novel kind, by regulating the relation between authors and publishers, without, however, depriving the parties of their right to introduce modifications by private contract.

Both Acts have been published in a very handy edition with excellent notes by Mr. Voigtlander, and with an appendix containing the text of the Austrian, Hungarian, and Swiss Statutes relating to copyright, the provisions of Hungarian and Swiss law on publishing contracts, the Berne Convention, the treaty between Germany and Austria-Hungary relating to copyright, and some practical directions as to American copyright."

Recent Juridical Articles in French Reviews.—"The original sin of French legal writers," says Mr. A. R. Whiteway, "is the beginning and not completing work upon which they start, and start often after so excellent a fashion that their sin is obviously made the more glaring in consequence.

"This has, I think, been already noticed in our pages as injuriously affecting Brissaud's *Histoire du Droit*, a serious work still lacking one or two fascicules, while a similar grave defect continues to exist in the case of Giraud's *Roman Law* likewise. These two quasi-institutional treatises figure among the most up-to-date French legal text-books, and it is a manifest hardship upon students that they should have been ever issued in so slovenly a form. Nevertheless, no doubt in a few more months this evil will in each instance be overpast—a desirable result that has, however, never been brought to pass in the case of Cuq's great work,[1] which, after more than ten years, still remains incomplete. But when we find the same sort of thing occurring in the matter of magazine articles, the vice of the practice becomes yet more emphasised and apparent. Take the case of M. Picot's first article upon 'Theories Concerning the Right to Punish.' This appeared in the October (1900) number of the *Journal des Savants*, and has not yet been continued. It forms in effect the first part of a review of Ferri's *Criminal Sociology*, of Lombroso's *magnum opus*, and Prins's *Penal Science and Positive Law*,[2] and contains nearly fourteen pages of excellent criticism. But the end is not yet—a good year afterwards.

[1] *Les Institutions juridiques des Romans*, tom. i., Plon, Paris, 1890.

[2] Rousseau, Paris, 1893; 3 vols, Alcan, Paris, 1895; Bruxelles, Paris, 1899.

"Among other recent articles in the same excellent review, is one upon the 'Custom of Beauvais (Philippe de Beaumanoir),' a new text of which came out last year edited by A. Salmon.[1] The review in question being by M. Dareste, it is needless to say that its value is great in the eyes of Frenchmen, especially since the history of French law has become part of the university curriculum. Beaumanoir is of course lauded at the expense of Bracton, Eyke, and Repgow. It is true that his observations upon the condition of serfs are of great and lasting value. We come to another article by M. Dareste upon *L'Ancien Droit Mongolo-Kalmouk*, prompted by Leontovick's book upon the subject and also by Samokvasov's *Customary Law of the Allogenes in Siberia*, and yet another by the same hand upon 'Provincial Administration in France from 1774–89,' which were the last years of the *ancien régime*. M. Guiraud follows with *Gaule Indépendante et Gaule Romaine*, and Delisle with the 'Canons of the Council of Liseaux (1064),' which merits our notice from having been taken from a MS. in the library of Trinity College, Cambridge. This particular study is of further interest as dealing with the enforced celibacy of the clergy about that date, and, moreover, because it contains the 'Invectiva Mag. M. Cornubiensis contra Mag. M. Abrincensem (Henri d'Avranches), Coram Dom. Electo Wyntoniensi et Episcopo Rofensi,' beginning

> Quando poeta prius te diximus archipoetam,
> Semper posterius vix diximus esse poetam.

"Passing to Clunct's *Journal of Private International Law*, we find that it has dealt, during the present year, with only about five English cases. These were *Re Whitelegg*, a will case before Sir Francis Jeune in May, 1899; *Cook* v. *Sprigg*, in the Privy Council in May, 1899—a matter touching annexation of territory; *The Stella*, a shipwreck case touching responsibility of owners for passengers' luggage, before Bucknill J. in July, 1899; a trade-mark case (House of Lords), *Batt, etc.*, v. *Dunnett, etc.* (June, 1899); and *Burrows* v. *Cecil Rhodes*, Q.B.D., March, 1899. It is of course to be regretted that more notice is not taken in France of our legal decisions. The excuse is in part, perhaps, that the same value is not placed upon case law there as with us. For in the eyes of French jurists legislative enactments and text-books are authorities of greater moment."

Railways and Caste in India.—Mr. Framjee Vicajee, of the Bombay Bar, deals in a recently published pamphlet with railways in India and their aspects political, social, economic. His remarks on their influence on caste feeling are particularly interesting.

"The railways," he says, "will indirectly contribute to demolish the castes, associated, as they are, with their obsolete conception of progress, and create instead a new society, broad-based upon the principle of the trades, which will shift and move with the movements of knowledge and experience.

[1] Picard, Paris, 1900.

Directly, too, the rail, by affording a cheap and quick passage, corrects such prejudices as impute derogation to the physical touch of the Brahmin with the Mhâr. The charm of economy is so great in a race of peculiarly thrifty habits like that of India, that for its sake the Brahmin is beginning to give up the ancient prerogatives of his order. 'The quality,' it is shrewdly, and to some extent with truth, observed, 'travel first-class in England to save their caste; in India they go third-class to save their money.'[1] Happily, the examples of a morbid regard for caste privileges are daily lessening, and I think at this day they have become rather an exception than the rule. 'The horror of a high-caste Baboo,' says the author of *Railways in India*, writing of the times when the rails were first introduced into Bengal—'the horror of a high-caste Baboo, when on entering the carriage he saw the sweeper and yet perceived from the hasty exclamations of the guard that he had the alternative of sitting with the Dome—the lowest caste of India, employed in killing dogs and burying dead—or of being left behind, was most evident.' After some hesitation he, however, went. The frequency with which the Brahmin and the Sudra are thus thrown into each other's society induces a certain amount of knowledge on either side which is most favourable to mutual good understanding ever after. It affords to the one opportunities of close observation into the character and life of the other, which discovers various points formerly concealed from distance or ignorance for reciprocal study, respect, and imitation. Railways thus remove the despotism of caste, and, whilst so operating as a great social leveller, render their services free of cost or compensation."

Compulsory Arbitration in Labour Disputes and New Zealand.—The Hon. W. P. Reeves, the Agent-General for New Zealand, writing to the *Saturday Review*, *apropos* of the Compulsory Arbitration Act recently passed by New South Wales, pays a striking tribute to the success of the system in New Zealand.

"The New Zealand Law," he says, "passed seven years ago, has been in active and constant use for six years and has undoubtedly succeeded. The report of the Royal Commission, lately sent from New South Wales to investigate it, is conclusive evidence as to that. It was passed with three objects. The first was to put an end to strikes and lock-outs. The second was to substitute some just and scientific method of settling the differences between organised labour and capital, and therefore the conditions of industry which are the eternal cause of these differences. The third object was to rebuild trade unionism upon a new basis of peace and responsibility, and at the same time to encourage the association of employers. All these objects have been gained. For six years there has been no strike or lock-out affecting a union. The only labour battles have been four or five wretched little squabbles affecting handfuls of unorganised labourers, and therefore not within the scope of the Arbitration Law. By a series of careful, painstaking,

[1] *Quarterly Review*, July, 1868.

and minute decisions the tribunals under the Arbitration Act have laid down fair labour conditions for nearly all the organised industries of the colony. Not only are the factory workers regulated: seamen, timber-cutters, coal-miners, gold-miners, the transport services and shop assistants are in turn being dealt with. So far from regulation interfering with the colony's prosperity, it is a commonplace that the last six years have probably been the most prosperous known in New Zealand. The number of the factory workers, which in 1895 was 29,000, has grown to 53,000 in 1901. Trade and production have made correspondingly rapid progress. Seven years ago unions of workpeople perhaps comprised 10,000 members. To-day they probably include 30,000. The organisation of employers, though not so rapid, is going on. There is nothing to be afraid of in these associations, for union strikes and lock-outs are things of the past in New Zealand."

The Roman Jurist and the English Lawyer.—"What is it," asks Mr. Bryce, "which we admire in the Roman jurists and in the Roman law generally? The characteristic merits of the Roman law are its reasonableness and its consistency. It is pervaded by a spirit of good sense. Except in two departments, those of the paternal power and of slavery, its rules almost always conform to considerations of justice and expediency. Very little needs to be excused as the result of historical causes. Even slavery and the *patria potestas*—the former universal in the ancient world, the latter so deep-rooted among the Romans that it could never be altogether expunged—are in the later centuries so steadily and carefully mitigated that most of their old harshness disappears. The moral tone of the law is, take it all in all, as high as that of any modern system; and in some few points higher than our own. By its consistency I mean the harmony and symmetry of its parts, the maintenance through a multiplicity of details of the leading principles, the flexibility with which these principles are adapted to the varying needs of time, place, and circumstance. So the excellence of the jurists resides in their clear practical sense, in the air of enlightenment and of what may be called intellectual urbanity which pervades them. Most of them express themselves with a concise neatness and finish which gives us the pith of their view in the fewest and simplest words. They dislike what is arbitrary or artificial, taking for their aim what they call elegance (*elegantia iuris*), the plastic skill (so to speak) in developing a principle which gives to law the character of Art, preserving harmony, avoiding exceptions and irregularities. Yet they never sacrifice practical convenience to their theories, nor does their deference to authority prevent them from constantly striving to correct the defects of the law as it came down from their predecessors.

"Compare Lord Coke, for instance, or Lord St. Leonards, with Papinian or Gaius. Lord St. Leonards was a man much admired by the profession and his books secured an authority unsurpassed or indeed equalled by any other legal writers of the century. His knowledge was immense and if

was minute. His treatises show the same acuteness and ingenuity in arguing from cases which his forensic career displayed. But these treatises are a mere accumulation of details, unillumined and unrelieved by any statement of general principles. In literary style, and no less in the cast and quality of his intellect, he is harsh and crabbed. How different are the Roman jurists! They reason and they write as men who have been thoroughly trained, who have been imbued with a large and liberal view of law, who have philosophy and analysis and the sense of historical development equally at their command."

BIBL.
LONDIN.
UNIV.

Printed by Hazell, Watson & Viney, Ld., London and Aylesbury.